National Archives and Records Administration

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Date : January 15, 2009

Reply to
Attn of : Office of Inspector General (OIG)

Subject : Management Letter No. 09-08, Award Fee Program for the Electronic Records Archives Development Contract

To: Adrienne Thomas, Acting Archivist of the United States (N)

The purpose of this management letter is to inform you that the Electronic Records Archives (ERA) development contract award fee program is not functioning in an efficient and effective manner, i.e., the award fee plan for determining the amount of award fees to be paid to the contractor is not being adhered to and was significantly changed without following proper modification procedures. Further, the award fees paid to the contractor did not comply with the process identified.

The purpose of an award fee is to reward good contractor performance and conversely address deficiencies in a constructive manner so as to effect positive change. The National Archives and Records Administration (NARA) did not act in accordance with a properly accepted award fee plan when determining award fees to be paid the ERA contractor, resulting in a lack of accountability and transparency over the distribution of government funds to the contractor; and in this particular case, it both changed the incentives provided to the contractor and provided it with an inappropriate windfall.

The ERA is NARA's most important and technologically advanced information technology program. Representing hundreds of millions of tax-payer dollars, the ERA is NARA's solution to the exponentially expanding problems, and opportunities, associated with electronic records. Among other functions, plans are for the ERA to allow NARA to store and to provide appropriate access to any type of computer file, indefinitely, and without regard to the software that originally created the file. For this seminal program, the agency awarded a multi-year, multi-increment, cost-plus-award-fee (CPAF) contract, originally valued at over $317 million, to the Lockheed Martin Corporation.

A CPAF contract is designed to motivate the contractor to provide an excellent work product by limiting its compensation to actual incurred costs, and then adding a bonus based on the government's subjective evaluation of contractor performance. For the ERA contract, NARA officials accepted a written Award Fee Plan (AFP) which detailed how the award fee program would be run, and how the award fees would be determined for Increment 1. Increment 1 of the ERA contract covered a two-year period ending with achieving an Initial Operating Capability (IOC) for the ERA. However, NARA ERA program officials neither properly used this plan when determining the Award Fees paid to LM, nor did they appropriately modify the plan prior to deviating from the written instructions. For example:

- NARA officials ignored the provisions of the AFP which called for an examination of the final, finished deliverable (IOC) for Increment 1, the result being an inappropriate windfall to Lockheed Martin.

- NARA officials changed the process for determining the pools of money available for each of the six-month, period-based awards, i.e., they ignored the contract table detailing the available award fee pools for each period. While some change was necessary due to contract funding issues, NARA officials went further and changed from unique dollar amounts for each period to a simple equal division of money between all periods. This artificially inflated the first performance period award.

- Nine of 37 planned evaluation criteria to be used as basis for award computation for Increment 1 were never used by NARA officials. The accepted AFP used for all four performance periods of Increment 1 only had detailed evaluation criteria for the first period. Written descriptions for eight rating categories, only applicable to subsequent periods, stated "to be determined" or contained similar language. However, these aspects were never described or evaluated. A ninth category was described, but never rated.

- Lockheed Martin was paid $63,136.00 as an award fee for "satisfactory" work in the third performance period, when the written plan expressly states "satisfactory" work **will not be rewarded**.

- Computations for award fees paid to Lockheed Martin could not be fully traced from the written work evaluations through to calculation of a dollar amount, in accordance with the AFP. The AFP states the award fees are supposed to be controlled by the Award Fee Determination Reports (AFDRs) decided on by the contracting officer and the Program Director. However, the actual monetary amounts paid to the contractor never corresponded to the AFDRs, but instead they generally corresponded with another report generated prior to the AFDRs.

- Without exception, actions required of NARA officials were untimely, i.e., they did not provide timely evaluations, ratings or payments in accordance with the AFP. For example, in period two the Performance Evaluation Board Report was 304 days late, and the notification of the award to Lockheed Martin was 325 days late. In another instance, NARA paid award fees for previous work after the contractor had been issued a Cure Notice for failing to make progress on the contract, i.e., NARA officials paid Lockheed Martin $980,482.00 in award fees after Lockheed Martin was issued a Cure Notice in July 2007 due to unsatisfactory work. While this money was for work performed earlier in the contract, the timing of the payments creates appearance issues. Untimely actions decrease the effectiveness of the incentive structure a CPAF contract is designed to create.

- There was a general lack of attention to detail in the Award Fee program. In several instances, we found errors in the mechanism for calculating percentage scores from adjectival scores, mathematical errors, typos on contract modifications, conflicting documentation, missing dates on contract documents, etc. We also noted that there was no effective filing system for contract documents. The ERA Program Management Office (NHE) has no staff dedicated to maintaining the contract files. Instead, this has become a collateral duty for the contracting officer and the program director. With the time constraints placed on these high-level officials, the contract files for NARA's largest, high-priority program have not been effectively maintained.

NARA ERA program officials were asked for explanations about the foregoing conditions. Responses ranged from a basic lack of resources (for the lack of a filing system) to more complicated interpretations of the AFP (such as their claim "satisfactory" work should still be rewarded if their calculations resulted in any percentage score above zero). However, their responses failed to adequately address the concerns of this office.

It should also be noted the funds originally obligated to the Increment 1 award fee program, but not distributed as award fees, were subsequently shifted to cover cost overruns in Increment 1 and to fund the Increment 2, Executive Office of the President (EOP) System award fees. Our effort did not include evaluating this shifting of funds with respect to fiscal law requirements.

Finally, because the AFP was designed to cover the award fee program for all Increments of the ERA contract, the issues and concerns of how the award fees were managed in Increment 1 will continue to have an effect on the contract in future years. For example, the AFP provisions for Increment 1 were used to administer the award fee program for Increment 2, the EOP System. Aside from the issues and errors noted above for the Increment 1 award fee program, it is not known if the AFP is adequate to properly incentivize Lockheed Martin on EOP, or for any subsequent Increments.

A CPAF contract provides an additional profit or fee amount that may be awarded, in whole or in part, based upon periodic evaluations of ongoing contractor performance. The criteria and rating plan should motivate the contractor to improve performance in the areas rated, but not at the expense of at least minimum acceptable performance in all other areas. Good AFPs (a) provide for evaluations of contractor performance levels, taking into consideration contributing circumstances and contractor resourcefulness; (b) focus the contractor on areas of greatest importance in order to motivate it to make the best possible use of company resources to improve performance; (c) clearly communicate evaluation procedures and provide for effective, two-way communication between contractor and government personnel responsible for evaluating performance and making award fee determinations; (d) provide for an equitable and timely evaluation process; (e) establish an effective organizational structure, commensurate with the complexity and dollar value of the particular procurement, to administer the award fee provisions; and (f) should be kept as simple as feasible; the simpler the plan, the more effective it is likely to be. The objective should be a workable plan with a high probability of successful implementation.

The conditions discussed in this management letter create a lack of transparency and accountability in the ERA Program. By February 15, 2009, please submit an action plan to the OIG describing how you plan to address the issues discussed in this management letter. If you have any questions, or require additional information pertaining to the ERA award fee program, please do not hesitate to contact me.

Paul Brachfeld
Inspector General

cc: NH (M. Morphy)

SUPPLEMENTAL INFORMAION

OIG Review Effort

On May 14, 2008, the Archivist of the United States testified to Congress concerning the award fee program for the Electronic Records Archives (ERA). Specifically, the Archivist stated once he and his senior staff were informed in May or June of 2007 that the contractor was significantly behind schedule, then no bonuses "went out … despite the fact that these cost-plus contracts have been built in." Based on information derived by the OIG auditors, this representation appeared inconsistent with records maintained by ERA Program officials.

Accordingly, the OIG initiated a review of the award fee program for the ERA contract with the Lockheed Martin Corporation. This project started out as a quick review of the program to assess its processes and determine how much, and when, award fees were paid to the contractor for the period relevant to the Archivist's testimony, which was Increment 1 of the contract. Increment 1 was the original two-year period from the start of ERA development through achieving an Initial Operating Capability for the ERA.[1] Our objectives were to (1) assess the general operation of the program, (2) identify how award fee amounts were determined and computed, and (3) compare the fees paid to the process identified.

ERA Program Description

ERA is a computer-based tool intended to allow NARA to handle and preserve any type of electronic record regardless of the computer program which created the record, or the format the record is saved in. ERA is also intended to permit NARA to manage and monitor the records lifecycle for all records being handled by NARA. One of the agency's largest programs, over $212 million has been appropriated to ERA through fiscal year 2008. Full Operating Capability for the ERA is not expected to be realized until March 2012, per program officials.

NARA ERA Development Contract Award Fee Process

To develop the ERA System, NARA entered into a cost-plus-award-fee (CPAF) contract, no. NAMA-04-C-0007, with the Lockheed Martin Corporation. The contract was structured as a base contract with several options which could be exercised in later years. Our review was limited to examining Option 1, Increment 1. Under the CPAF arrangement, Lockheed Martin is paid its actual costs, plus overhead and burden, without a set profit for work done. The contractor then has the opportunity to be rewarded for excellent performance with an award fee. According to the Federal Acquisition Regulation (FAR), Part 16.305, Cost-Plus-Award-Fee Contracts, award fees are "based upon a judgmental evaluation by the Government, sufficient to provide motivation for excellence in contract performance." For Increment 1 the award fee represents approximately nine percent of the total contract value.

Under NARA's contract with Lockheed Martin, there is a written Award Fee Plan (AFP) detailing the procedure for determining award fees. The plan was written by the contractor and then accepted by

[1] Problems in the ERA program delayed completion of Increment 1 past the designed two-year timeframe.

NARA.[2] The plan divides the entire contract into six-month periods to be evaluated for award fees, and then each contract Increment has an award fee available for an overall evaluation of the contract deliverable for that Increment (called the system performance award). For Increment 1 there were four planned six-month periods, and the contract deliverable was Initial Operating Capability for the system. Since award fees were only paid to Lockheed Martin for the first three six-month periods of Increment 1, only those periods were examined in detail. For the fourth period, Lockheed Martin was awarded a 0%, $0 award fee.

According to the AFP, NARA experts rated the contractor's work performance in 37 categories called "performance aspects." These ratings were then submitted to and evaluated by NARA's Performance Evaluation Board which, in turn, submitted a report, called the Performance Evaluation Board Report (PEBR), to the Program Director (PD) and Contracting Officer (CO). This PEBR condensed the 37 performance aspect ratings into three main categories: Performance, Schedule, and Cost. The PD and CO were to consider this report, but it was up to them to make the final determination. This decision was to be recorded on an Award Fee Determination Report (AFDR). Then, a contract modification would be issued and Lockheed Martin would be paid its award fee. The plan called for the entire process to be completed no later than 45 days after the end of the applicable six-month period.

The contractor's work performance was given both a descriptive (adjectival) rating and a percentage-based rating. The adjectival ratings available (and their corresponding percentage ranges) were (a) Poor/Unsatisfactory, (b) Satisfactory, (c) Good - 1% to 40%, (d) Very Good - 41% to 80%, (e) and Outstanding - 81% to 100%. The plan specifically states the contractor was not to be rewarded for "Satisfactory" or "Poor/ Unsatisfactory" work. The actual dollar value of an award fee was determined by adding up weighted percentage scores for the three main categories and then multiplying this total percentage score by the pool of money available for the particular award fee. The written plan gives specific dollar values for the available award fee pools for each six-month period award and for the system performance awards. In the written plan, none of the period or system performance award pools are equal in dollar value. The government has the right to unilaterally make changes to the AFP, but must give Lockheed Martin written notice 30 days prior to the start of the period the change is to take effect.

[2] LM submitted several subsequent plans. However, NARA ERA officials stated the plan dated May 16, 2005 was the only version ever accepted, and confirmed this plan was used for all of Increment 1.