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Date : September 28, 2012

Reply to

Attn of : Office of Inspector General (OIG)

Subject : Management Letter No. 12-16, Contractor Oversight

To : Charles Piercy, Executive for Business Support Services (B)

This Management Letter is to inform you of additional observations identified during our Review of Costs for Lockheed Martin Corporation (LMC) Subcontracts with [REDACTED] (OIG Report No. 11-21 dated September 30, 2011). Specifically, we found the National Archives and Records Administration's (NARA's) Electronic Records Archives (ERA) Program Management Office officials did not have: (1) an adequate process in place to assess whether LMC was properly carrying out its subcontractor oversight responsibilities, nor (2) have a firm grasp of the specific tasks the subcontract staff members were performing on a daily basis. As a result of ineffective controls, the price NARA pays for these types of subcontractor services with cost-reimbursement elements could be adversely affected.

We noted the following observations during our review of [REDACTED] subcontracts:

- LMC officials did not use competition to acquire [REDACTED] NARA needs to ensure subcontracts are awarded on a competitive basis to the maximum practical extent, or an adequate justification for not competing a subcontract is provided by the prime contractor and accepted by NARA prior to the subcontract award.
- [REDACTED] subcontracts did not identify requirements, i.e., the specific work to be performed by the subcontractor and the deliverables to be provided by the subcontractor. As a result, it was difficult to monitor the subcontractor effort, i.e., for LMC and NARA officials to monitor and to ensure [REDACTED] performed effectively and efficiently in accordance with the terms of the subcontract. NARA needs to ensure subcontracts adequately describe the specific work to be performed and the deliverables to be provided by the subcontractor.

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- [REDACTED] timesheets could not be used to validate direct labor hours charged to the subcontracts. Lockheed officials did not require [REDACTED] provide supporting documentation, e.g., signed timecards, with its invoices for substantiating direct labor charges, and there was no documentation to support that overtime worked was pre-approved as required by the terms of [REDACTED] subcontracts.
- Neither [REDACTED] nor LMC officials provided sufficient documentary evidence to support that the personnel hired to work on [REDACTED] subcontracts are U.S. citizens. Federal law requires employers to verify an employee's eligibility to work in the United States. NARA contracting officials need to obtain documented evidence from prime contractors that personnel hired to work on subcontracts are U.S. citizens, or individuals legally authorized to work in the United States.
- For some individuals, security background investigations were either not conducted or were conducted long after the individuals had already begun working on [REDACTED] subcontracts. NARA needs to obtain evidence from the prime contractor that appropriate security background investigations are completed for individuals hired by the prime to perform work as a subcontractor prior to being granted access to NARA's facilities and/or information systems.
- NARA ERA program officials did not appear to have a firm grasp of the specific tasks that [REDACTED] staff members were performing on a daily basis. This observation was made when discussing the LMC invoice approval process with the Contracting Officer Representative (COR). When the contractor, LMC, submitted an invoice to NARA for payment, the COR sent copies of the invoice to the respective office heads who were to participate in the invoice review process. Those individuals were responsible for evaluating the contractor's performance pertaining to the ERA Program areas for which they were responsible. The COR would consider their feedback when making her decision as to whether to approve Lockheed's invoice for payment. According to her, those responsible for providing feedback never provided any. If no feedback was received from the others involved in the invoice approval process, the COR concluded, rightly or wrongly, that they believed the contractor charges and effort to be satisfactory.

Because of the absence of a direct contractual relationship with the subcontractor, i.e., "privity" of contract, NARA program office officials relied on LMC, the prime contractor, to manage the subcontracted effort. These officials should have ensured that LMC was exercising adequate controls over the subcontractor, because problems at the subcontract level can have a significant impact on a prime contractor's ability to meet its contractual obligations.

According to the Defense Systems Management College *Subcontracting Management Handbook*, efficient and effective management of subcontractors by the prime contractor is essential to the accomplishment of a successful acquisition program. To ensure that the prime

contractor is performing the management function adequately and the subcontractors' performances are being accomplished in a satisfactory manner, Program Management Office (PMO) officials should monitor these efforts through reviews, analyses and visits to the prime contractor and subcontractors' plants and facilities. Through enhanced management attention to the responsibilities and actions of the prime contractor, the government can reduce the risks involved in the subcontracted activities of the acquisition process. The point to be emphasized is that subcontracting management focuses on the government's efforts to ensure that the prime contractor executes its responsibilities in managing its subcontractors.

“Privity of contract” simply means that no direct contractual relationship exists between the government and the subcontractors. However, the government has the responsibility for managing taxpayer funds and taking all practical measures to ensure successful contract completion. This includes ensuring that prime contractors manage their subcontracts in an equally responsible manner. Since the prime contractors are paid to manage subcontractors, the government should not and does not duplicate their effort.

Since no privity of contract exists between the government and subcontractors, the prime contractor is compensated to perform that management function. However, the government must ensure that the prime contractor exercises adequate control over the subcontractors, so that the prime's contractual requirements as well as those of the government are met adequately and in a timely manner.

In our opinion, LMC's inadequate subcontract management was caused by NARA's lack of oversight over the prime contractor and the absence of documented policies and procedures. Subcontracting management encompasses the functions of planning and management of key aspects of subcontracted efforts, through enhanced government coordination and interaction with prime contractors. Proper oversight by NARA officials of Lockheed Martin subcontract management activities may have precluded the existence of some, if not all, of these issues.

It should also be noted that, in a previous OIG report¹, we recommended that the Director, Acquisitions Services Division, require the ERA CO to establish documented policies and procedures for ensuring that Lockheed Martin (a) obtains supporting documentation from its subcontractors for validating subcontractor labor charges, and (b) periodically conducts audits of subcontractor accounting records, in accordance with the terms of the subcontracts. We found no evidence to support that NARA officials had taken any action to comply with this recommendation.

By not having an adequate process in place to assess whether a prime contractor is properly carrying out its subcontractor oversight responsibilities, the price NARA pays for subcontractor services could be adversely affected. We are including in Attachment A, suggestions, that if

¹ OIG Audit Report, no. 08-11, *Review of Subcontract Costs on the Electronic Records Archives Development Contract*, dated August 28, 2008.

implemented, should help strengthen contractor oversight when subcontractors are used in the performance of a prime's contract. If you have any questions concerning the information presented in this Management Letter, please do not hesitate to contact me at (301) 837-3000.

A handwritten signature in cursive script that reads "James Springs".

James Springs
Acting Inspector General

cc: David S. Ferriero, Archivist of the United States (N)
La Verne Fields, Acquisitions Division Director (BA)

SUGGESTIONS

We are providing the following suggestions to help strengthen contractor oversight in future NARA information technology (IT) programs/projects where prime contractors use subcontractors in the performance of their contracts.

The Executive for Business Support Services (B), in conjunction with the Director of Acquisitions (BA), should:

Develop documented policies and procedures, and define NARA project manager roles and responsibilities, for ensuring that prime contractors adequately carry out their subcontractor oversight responsibilities, so that the prime's contractual requirements as well as those of the government are met adequately and in a timely manner. The policies and procedures should at least include:

- ensuring competition to the maximum extent practical and adequately defining the scope of work to be performed,
- reviewing subcontract documents, progress reports, and deliverables, to become familiar with the effort that subcontractors are tasked to accomplish,
- requiring contracting officers to have prime contractors provide sufficient, supporting documentation from subcontractors, e.g., signed, employee timesheets, for validating subcontractor labor charges,
- requiring contracting officers to work with the security office in order to verify documented evidence from prime contractors that supports:
 - (1) personnel hired to work on subcontracts are verified to be U.S. citizens, or individuals legally authorized to work in the U.S.; and
 - (2) appropriate security background investigations are completed before individuals hired by the prime contractor to perform subcontract effort are granted access to NARA's facilities and/or information systems.