



U.S. Department of Energy
Office of Inspector General
Office of Audits and Inspections

INSPECTION REPORT

Procurement Administration and Human
Reliability Program Revocations Within the
Office of Secure Transportation

OAI-M-16-07

March 2016



Department of Energy
Washington, DC 20585

March 21, 2016

MEMORANDUM FOR THE ADMINISTRATOR, NATIONAL NUCLEAR SECURITY
ADMINISTRATION
ASSOCIATE UNDER SECRETARY, OFFICE OF
ENVIRONMENT, HEALTH, SAFETY, AND SECURITY

A handwritten signature in cursive script that reads "George W. Collard".

FROM: George W. Collard
Deputy Inspector General
for Audits and Inspections
Office of Inspector General

SUBJECT: INFORMATION: Inspection Report on the "Procurement
Administration and Human Reliability Program Revocations Within the
Office of Secure Transportation"

BACKGROUND

The Department of Energy's (Department) National Nuclear Security Administration (NNSA) Office of Secure Transportation (OST) uses a professional force of Federal agents to transport nuclear weapons, weapon components, and special nuclear material. These agents participate in the Human Reliability Program (HRP), a security and safety reliability program designed to ensure that agents meet the highest standards of reliability and physical and mental suitability. OST's HRP is administered through its Federal and contractor workforce. The OST Federal workforce is responsible for procedure and policy development, procurement administration, and identification of control weaknesses.

We received an allegation that (1) an OST Contracting Officer's Representative (COR) modified an existing contract to circumvent the need for a sole source or competitive bid procurement, (2) the Department did not receive all of the deliverables specified in the contract modification, and (3) the Department contracted for duplicative services currently being provided under an existing Interagency Agreement (IA). OST received a number of support activities such as medical services through the IA. Further, we received another allegation concerning the lack of time constraints or deadlines for reinstating or revoking an agent's HRP status when an agent is temporarily removed from HRP duties. We initiated this inspection to determine the facts and circumstances surrounding the allegations.

RESULTS OF INSPECTION

We identified opportunities for improvement with certain aspects of OST's procurement administration and the HRP adjudication reviews. Specifically, we did the following:

- Identified four policy changes that were approved by OST management but not communicated to the Contracting Officer (CO) by the OST COR. As such, modifications necessary to officially effect the changes to the IA were not made. Additionally, the OST COR inappropriately directed the IA medical service provider to follow one of the four revised policy changes.
- Confirmed that while an agent is temporarily removed from HRP duties, there are no time constraints or deadlines for reinstating or revoking an agent's HRP status.

Our review did not substantiate the allegations that OST officials circumvented the bid process, that contract deliverables were not received, or that a contract was awarded for services already provided under an existing IA.

We found that the IA was not properly modified because the COR did not fully satisfy her responsibilities. Specifically, although required to do so, we found that the COR did not notify the then NNSA's CO of the four OST-approved policy changes or request that the CO modify the IA. The COR told us that her failure to notify the CO was an inadvertent oversight.

We discussed one of the four unauthorized policy changes to the IA regarding the discontinuation of prequalification risk assessments (medical screening) with the current CO. The current CO, who was unaware of this change until we brought it to her attention, took immediate action by directing that the IA medical service provider cease following the changed OST policy. In March 2014, in accordance with established procedures, the COR requested that the current CO modify the IA. However, the modification, which included the four policy changes we identified, was not made because the CO indicated that she was waiting for an OST concurrence from a medical perspective and completion of the ongoing Office of Inspector General review. A senior OST official informed us that he did not provide the CO medical concurrence because the IA was set to expire and a contract was to be issued for the applicable services.

Further, we found that timeframes for all levels of review concerning the revocation of an individual's HRP status had not been established by the Department or defined in Title 10 Code of Federal Regulations (CFR) § 712, *Human Reliability Program*. Similarly, OST policies and procedures do not provide timeframes for completion of all levels of review, especially during the period between initiation of the HRP status temporary removal and the initial HRP status revocation.

OST officials told us that the Department began an effort to rewrite the 10 CFR 712 provisions to address this, and other issues, in approximately 2007 but had yet to agree on a set of standards in this area. We learned that some progress has been made regarding time limits. For example, in September 2012, the Office of Environment, Health, Safety, and Security (AU), which is responsible for Department-wide HRP policy, issued a standard operating procedure (SOP) that outlined the process and expectations for all offices involved in the HRP appeals/revocation process. Additionally, in December 2014, a new SOP was issued that provides timeliness goals for AU and the Department's Office of the General Counsel when issuing a recommended decision for the appeals process.

We believe that control weaknesses regarding the procurement matters discussed in this report and the lack of specified timeframes during HRP adjudication review could adversely affect OST's mission effectiveness and resource utilization. To that end, we have made recommendations designed to address those problems.

MANAGEMENT RESPONSE

Management concurred with the report's recommendations and indicated that corrective actions had been initiated or were planned to address the issues identified in the report. Management's response and planned actions are responsive to our recommendations. Management's formal comments are included in Appendix 2.

Attachments

cc: Deputy Secretary
Chief of Staff
General Counsel
Acting Assistant Deputy Administrator for Secure Transportation

PROCUREMENT ADMINISTRATION AND HUMAN RELIABILITY PROGRAM REVOCATIONS WITHIN THE OFFICE OF SECURE TRANSPORTATION

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PROCUREMENT ADMINISTRATION AND HUMAN RELIABILITY PROGRAM REVOCATIONS WITHIN THE OFFICE OF SECURE TRANSPORTATION

DETAILS OF FINDING

We received allegations that (1) an Office of Secure Transportation (OST) Contracting Officer's Representative (COR) modified an existing contract to circumvent the need for a sole source or competitive bid procurement, (2) the Department of Energy (Department) did not receive all of the deliverables specified in the contract modification, and (3) the Department contracted for duplicative services currently being provided under an existing National Nuclear Security Administration (NNSA) Interagency Agreement (IA). Further, we received another allegation concerning the lack of time constraints or deadlines for reinstating or revoking an agent's Human Reliability Program (HRP) status when an agent is temporarily removed from HRP duties.

Although our review did not substantiate the specific allegations of contracting irregularities, we identified opportunities for improvement with certain aspects of OST's procurement administration and the HRP adjudication reviews. Specifically, we did the following:

- Identified four policy changes that were approved by OST management but not communicated to the Contracting Officer (CO) by the OST COR. As such, modifications necessary to officially effect the changes to the IA were not made. Additionally, the OST COR inappropriately directed the IA medical service provider to follow one of the four revised policy changes.
- Confirmed that while an agent is temporarily removed from HRP duties, there are no time constraints or deadlines for reinstating or revoking an agent's HRP status.

Procurement Administration

We found that the COR did not take appropriate actions to notify the CO of four relevant policy decisions approved by OST that affected the IA. The CO stated that a COR's authorities and responsibilities for an IA are defined in the COR designation letter. The *Designation of Contracting Officer's Representative Letter*, dated May 7, 2012, for the IA states that the COR has no authority to execute or to agree to any modification nor attempt to resolve any dispute concerning a question of fact. The COR is not authorized to take any action, either directly or indirectly, that could result in a change in the cost/price, quality, quantity, place of performance, delivery schedule, or any other terms and conditions, or to direct the accomplishment of effort that would exceed the scope of the IA. Additionally, the COR's responsibilities for this IA included a mandate to inform the CO, in writing, of any necessary changes in the statement of work, task order, uniform reporting requirements, or any other part of the IA. Further, the current CO stated that a modification was required if a policy referenced in the IA was rescinded or revised.

In one case, contrary to Federal guidelines, the COR directed the medical service provider to implement OST-wide policy concerning the discontinuation of prequalification risk assessments without notifying the CO or requesting a modification to the IA. For example, in April 2012, the COR directed that the OST-approved standard operating procedure (SOP) 4.00.08, *Physical*

Performance Qualifications, be substituted for OST Policy 4.14, *Physical Fitness Qualification and Remediation*, without notifying the CO or requesting that the IA be modified to reflect the change. The medical service provider implemented the policy.

Concerning the IA in question, the statement of work required that the prequalification risk assessments be performed, as described in OST Policy 4.14. The IA specified that the Lead Exercise Physiologist “Perform risk factor screening and assessments for Clearance to Perform Physical Performance Qualifications Testing.” Medical service provider exercise physiologists told us that the policy change relieved them of that responsibility.

We found that the current CO was not aware that the risk factor screening policy was eliminated until we brought this matter to the CO’s attention. According to Federal Acquisition Regulation Subpart 1.602-2, *Career Development, Contracting Authority, and Responsibilities*, COs are responsible for ensuring performance of all necessary actions for effective contracting and ensuring compliance by both parties with the terms of the contract. We discussed the policy change with the CO who took immediate corrective action by directing that the IA medical service provider cease following OST SOP 4.00.08 and revert back to OST Policy 4.14, which included risk factor screenings. In March 2014, in accordance with procedures, the COR requested that the current CO modify the IA; however, the modification, which included the four policy changes we identified, was not made because the CO indicated she was waiting for an OST concurrence from a medical perspective and due to the ongoing OIG review. An OST official indicated that they did not provide the CO medical concurrence because the IA was set to expire and a new contract would be issued for these services.

HRP Status Revocation

We also confirmed that while an agent is temporarily removed from HRP duties, there are no time constraints or deadlines for reinstating or revoking an agent’s HRP status. Our inspection revealed that once an agent’s HRP status has been temporarily removed, and during the adjudication process, individuals are placed on paid administrative leave until a final determination is made, actions that can take years to complete. In some instances, the HRP adjudication process may depend on local Department actions (i.e., Title 10 Code of Federal Regulations [CFR] § 710, *Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material*) prior to final decision that can affect the time the person is on paid administrative leave.

Title 10 CFR 712, *Human Reliability Program*, places limits on some phases of the adjudication process to no more than 30 days, including the Office of Hearing and Appeals issuing a recommended decision and for the cognizant Under Secretary issuing a final determination. However, we found that 10 CFR 712 is silent as to the number of days to be taken in much of the HRP status revocation process. Additionally, we found that the *OST HRP Implementation Plan* does not provide specific timeframes as well. The *OST HRP Implementation Plan* states that because the length of each review will vary depending on the nature of the incident, OST can establish no set timeline for determinations of reinstatements or revocations.

In August 2011, the Department initiated changes to internal policies and regulations concerning findings regarding HRP by the U.S. Office of Special Counsel. The U.S. Office of Special Counsel's findings noted that a Departmental working group was reviewing regulatory changes to expedite the internal appeals process to avoid long delays. However, in meetings with senior NNSA, OST, and Office of Environment, Health, Safety, and Security (AU) officials, we were told that Department officials have been attempting to address this and a number of other issues through a rewrite of 10 CFR 712 since approximately 2007. Some progress has been made regarding time limits. For example, in September 2012, AU, which is responsible for Department-wide HRP policy, issued an SOP that outlined the process and expectations for all offices involved in the HRP appeals/revocation process. Additionally, in December 2014, a new SOP was issued that provides timeliness goals for AU and the Department's Office of the General Counsel when issuing a recommended decision for the appeals process.

Concerning OST, an NNSA official opined that one of the longest periods in the HRP status revocation process occurs between the HRP status temporary removal date and the initial HRP status revocation date. Similar to our finding, a 2013 independent external assessment found that known deficiencies undercut the effectiveness of the HRP, one of which included the absence of timeliness for adjudication.

Contributing Factors and Impact

We found that the IA was not properly modified because the COR did not fully satisfy her responsibilities. Specifically, although required to do so, we found that the COR did not notify the then NNSA's CO of the four OST-approved policy changes or request that the CO modify the IA. The COR acknowledged that she was aware of her roles and responsibilities, and that her failure to notify the CO was an inadvertent oversight. The CO informed us that there was a different CO on the IA at the time these policy changes occurred. However, in our discussion with the current CO, she outlined the oversight responsibilities the CO has for a COR. Specifically, the CO explained that CORs are expected to communicate any pertinent actions or technical direction, per their designation letter. However, if the COR deviates from their designation letter responsibilities, the CO is the one held accountable because they are ultimately liable for that contract. As a result of our inspection, the CO told us that she has improved oversight by requiring monthly meetings between the CO and COR.

Further, we found that timeframes for all levels of review concerning the revocation of an individual's HRP status have not been established or defined in 10 CFR 712 or the *OST HRP Implementation Plan*. The Department acknowledged, and we confirmed, that there are extensive delays in the HRP adjudication process. A Departmental working group is reviewing regulatory changes to expedite the internal appeals process to avoid these delays. During the inspection, OST officials told us that they are uncertain about their ability to establish timeframes in the *OST HRP Implementation Plan*, in the absence of such timeframes in 10 CFR 712. OST has since received clarification that they currently have the ability to establish internal timeframes/goals.

We believe that control weaknesses regarding the procurement matters discussed in this report and the lack of specified timeframes during HRP adjudication review, could adversely affect OST's mission effectiveness and resource utilization.

RECOMMENDATIONS

To address the issues identified in this report, we recommend that the Administrator of the National Nuclear Security Administration:

1. Provide training for relevant Contracting Officer's Representatives to ensure that they are fully cognizant of their responsibilities regarding policy changes and associated procurement vehicle modifications.

To address the issues identified in this report, we recommend that the Associate Under Secretary of the Office of Environment, Health, Safety, and Security, in coordination with the National Nuclear Security Administration:

2. Assess the Human Reliability Program adjudication process and, where possible, provide specific time limits on the number of days a review can take in those identified phases.

MANAGEMENT RESPONSE

NNSA concurred with each of the report's recommendations and indicated that corrective actions had been initiated or were planned to address the identified issues. NNSA advised that COR responsibilities are covered in existing training. However, NNSA will reinforce applicable procurement administration requirements with OST CORs. Additionally, NNSA advised that the Department is in the early stages of an effort to evaluate all aspects of the HRP. NNSA's OST will actively participate in that initiative and will update its implementation plan, as necessary, based on the outcomes.

AU concurred with recommendation 2. The Office of Corporate Security Strategy, Analysis, and Special Operations within AU has drafted a revision to 10 CFR 712 to address due process and burden of proof for the individuals who file an appeal when an incumbent's HRP certification is revoked. The Department is in the early stages of an effort to evaluate its HRP to propose recommendations for improvements. The program review will include areas such as the certification, temporary removal, revocation, and appeal process.

INSPECTOR COMMENTS

Management comments and the planned corrective actions were responsive to our recommendations. Management's comments are included in Appendix 2.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

While conducting a review of the Office of Secure Transportation (OST), we received an allegation that (1) an OST Contracting Officer's Representative (COR) modified an existing contract to circumvent the need for a sole source or competitive bid procurement, (2) the Department of Energy (Department) did not receive all of the deliverables specified in the contract modification, and (3) the Department contracted for duplicative services currently being provided under an existing Interagency Agreement. Further, we received another allegation concerning the lack of time constraints or deadlines for reinstating or revoking an agent's Human Reliability Program (HRP) status when an agent is temporarily removed from HRP duties. We initiated this inspection to determine the facts and circumstances surrounding the allegations.

Scope

We conducted our inspection fieldwork from August 2014 through March 2016 at Department facilities in Oak Ridge, Tennessee; Albuquerque, New Mexico; and Washington, DC. This inspection was conducted under Office of Inspector General (OIG) project number S15IS001.

Methodology

Inspection activities include:

- Evaluated Department and local policies, procedures, and guidance;
- Interviewed and conducted meetings with Federal and Contractor officials, including OST managers, agents, a COR, the Site Occupational Medical Director, and Counsel;
- Obtained and reviewed documents and emails concerning various aspects of the inspection; and
- Reviewed related Government Accountability Office and OIG prior reports.

We conducted this allegation-based inspection in accordance with the Council of the Inspectors General on Integrity and Efficiency's *Quality Standards for Inspection and Evaluation*. Those standards require that we plan and perform the inspection to obtain sufficient, appropriate evidence to provide a reasonable basis for our conclusions and observations based on our inspection objective. We believe the evidence obtained provided a reasonable basis for our conclusions and observations based on our inspection objective. Accordingly, the inspection included tests of controls and compliance with laws and regulations to the extent necessary to satisfy the inspection objective. Because our review was limited, it would not necessarily have disclosed all internal control deficiencies that may have existed at the time of our inspection. Finally, we did not rely on computer-processed data to satisfy our objective. The National Nuclear Security Administration and Office of Environment, Health, Safety, and Security management waived an exit conference on March 7, 2016.

MANAGEMENT COMMENTS



Department of Energy
Under Secretary for Nuclear Security
Administrator, National Nuclear Security Administration
Washington, DC 20585



February 24, 2016

MEMORANDUM FOR RICKEY R. HASS
ACTING INSPECTOR GENERAL

FROM: FRANK G. KLOTZ *FK 2/24/2016*

SUBJECT: Comments on the Office of Inspector General Draft
Report Titled *Office of Secure Transportation*
Management Control Issues (S15IS001)

Thank you for the opportunity to review and comment on the subject draft report. The National Nuclear Security Administration (NNSA) concurs with the Office of Inspector General's recommendations, and the attachment to this memorandum details the specific actions planned to address each, as well as timelines for completion. I understand the Department of Energy's Office of Environment, Health, Safety and Security is providing a separate response regarding their actions related to recommendation number two.

We appreciate the inspectors' efforts in highlighting opportunities to enhance our processes. If you have any questions regarding this response, please contact Mr. Dean Childs, Director, Audit Coordination and Internal Affairs, at (301) 903-1341.

Attachment





Department of Energy
Washington, DC 20585

December 21, 2015

MEMORANDUM FOR RICKEY R. HASS
 ACTING INSPECTOR GENERAL
 OFFICE OF INSPECTOR GENERAL

FROM: MATTHEW B. MOURE *MB Mourey*
 ASSOCIATE UNDER SECRETARY
 OFFICE OF ENVIRONMENT, HEALTH, SAFETY AND SECURITY

SUBJECT: Comments for Inspector General's Draft Inspection Report on
 "Procurement Administration and Human Reliability Program
 Revocations Within the Office of Secure Transportation" (S15IS001)

Thank you for the opportunity to comment on the Draft Inspection Report, "Procurement Administration and Human Reliability Program Revocations Within the Office of Secure Transportation," provided to the Office of Environment, Health, Safety and Security (AU) on November 9, 2015. Overall, AU supports the general findings of the report and its recommendations.

Recommendation 1.2: To address the issues identified in this report, we recommend that the Associate Under Secretary of the Office of Environment, Health, Safety and Security, in coordination with NNSA: Assess the Human Reliability Program adjudication process and, where possible, provide specific time limits on the number of days a review can take in those identified phases.

Management Decision: Concur

Action Plan: The Office of Corporate Security Strategy, Analysis and Special Operations, within AU has drafted a revision to CFR 712, Human Reliability Program (HRP), to address due process and burden of proof for individuals who file an appeal when an incumbent's HRP certification is revoked. The changes will promote consistency in policy and process for handling appeal cases. DOE is in the early stages of an effort to evaluate the Department's Human Reliability program to propose recommendations for improvements. The program review will include areas such as the certification, temporary removal, revocation and appeal process.

Estimated Completion Date: December 31, 2016

Attachments



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