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ACF Used Contractor Personnel To Perform Inherently Governmental Functions and Paid Millions in Potentially Unallowable Costs

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Why OIG Did This Audit

- In Federal FY 2021, there was an influx of unaccompanied alien children at the U.S. southern border. As a result, the Administration for Children and Families' (ACF's) Office of Refugee Resettlement, which manages the Unaccompanied Alien Children Program, identified a need to increase the number of shelter beds and related services in its provider network. ACF awarded a $301,747 sole source contract to Deloitte Consulting, LLP (Deloitte) to provide professional support services to address the influx of children and through subsequent modifications of the contract, increased the value of the award to $19.4 million.
- We are conducting a series of audits that focus on contracting for shelter and related services for unaccompanied alien children. This report addresses whether ACF awarded and monitored the Deloitte contract in accordance with Federal requirements and HHS policies and procedures.

What OIG Found

ACF did not award and monitor the Deloitte contract in accordance with Federal requirements and HHS policies and procedures:

- ACF did not solicit and receive offers from two or more offerors as required by the Federal Acquisition Regulation (FAR), potentially denying the Federal Government an opportunity to receive higher quality, lower cost services from another vendor.
- ACF administered the contract in a manner that created the appearance of an employer-employee relationship with Deloitte staff. ACF also allowed Deloitte and its subcontractors to perform inherently governmental functions.
- ACF did not review and approve invoices in accordance with the FAR or the terms of the contract. As a result, ACF paid Deloitte approximately $5 million for potentially unallowable costs and may have violated the Antideficiency Act by paying $1.5 million for services outside the periods of performance.
- ACF did not provide written consent for Deloitte to use subcontractors.

What OIG Recommends

We made six recommendations, including that ACF update its policies and procedures and provide training related to awarding and monitoring of contracts, review potentially unallowable costs, and review and correct any potential Antideficiency Act violations. The full recommendations are in the report.

ACF concurred with five of our recommendations, partially concurred with one recommendation, and detailed the steps it has taken and plans to take in response to our recommendations.

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INTRODUCTION

WHY WE DID THIS AUDIT

The Office of Refugee Resettlement (ORR), a program office of the Administration for Children and Families (ACF) within the Department of Health and Human Services (HHS), manages the Unaccompanied Alien Children (UAC) Program.[1] In Federal fiscal year (FY) 2021, an unprecedented number of unaccompanied alien children began arriving at the U.S. southern border. As a result, ORR identified a need to increase the number of shelter beds and related services in its provider network. ACF awarded a $301,747 sole source contract to Deloitte Consulting, LLP (Deloitte) to provide professional support services related to the UAC Program and through subsequent modifications of the contract, increased the value of the award to $19.4 million.[2, 3] We refer to this contract as the "Deloitte contract." A prior HHS Office of Inspector General (OIG) audit identified issues related to the use of a sole source contract to provide services to unaccompanied alien children.[4] In addition, the media[5] and Congress[6] have expressed concerns regarding ACF's awarding of sole source contracts for services provided at emergency intake sites.

As part of OIG's oversight of ORR, we are conducting a series of audits that focus on contracting for shelter and related services for unaccompanied alien children. This report specifically addresses the Deloitte contract.

OBJECTIVE

Our objective was to determine whether ACF awarded and monitored the Deloitte contract in accordance with Federal requirements and HHS policies and procedures.

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[1] Unaccompanied alien children have no lawful immigration status in the United States, are less than 18 years of age, and have no parent or legal guardian in this country, or do not have one available to assume custody and care for them in this country (6 U.S.C. § 279(g)(2)).

[2] According to the contract, professional support services included services such as data analytics, business management support, and report preparation.

[3] ACF's contract justification for using other than full and open competition cited Federal Acquisition Regulation (FAR) § 6.302-2 ("Unusual and Compelling Urgency"), which limits the number of sources for soliciting bids or proposals. For this contract, because only one source was solicited, it is considered a sole source contract.

[4] OIG, *The Office of Refugee Resettlement Did Not Award and Manage the Homestead Influx Care Facility Contracts in Accordance With Federal Requirements* (A-12-20-20001), Dec. 18, 2020.

[5] El Paso Times: Fort Bliss migrant children shelter contractor receives nearly $1B contract despite mismanagement allegations - Government Accountability Project (whistleblower.org). Accessed on Dec. 17, 2024.

[6] U.S. House of Representatives, Letter-to-HHS-re-whistleblower-complaints-Fort-Bliss.pdf (house.gov). Accessed on Dec. 17, 2024.

BACKGROUND

Unaccompanied Alien Children Program

The UAC Program serves children who arrive in the United States unaccompanied and children who are separated from their parents or legal guardians by immigration authorities. Federal law requires the safe and timely placement of children in the least restrictive setting that is in the best interest of the child. Care facilities provide temporary care including housing, medical care, mental health services, recreational activities, and educational services for children until they are released to a sponsor or otherwise leave ORR custody.

Before the increase in border crossings ORR experienced in 2021, ORR built up its capacity to include more than 13,500 licensed beds. Nonetheless, in FY 2021 ORR decided it needed additional capacity to manage the increasing numbers of unaccompanied alien children and to implement COVID-19 mitigation strategies. Therefore, ORR reactivated 1 influx care facility and, in conjunction with the Federal Emergency Management Agency and the Department of Defense, opened a total of 14 temporary emergency intake sites along the U.S. southern border and in the interior of the country.[7] These sites were intended to provide ORR with the needed capacity to accept children into facilities where they could be safely processed, cared for, and either released to a sponsor or transferred to an appropriate ORR shelter for longer-term care. Emergency intake sites were intended for use as a temporary measure.

Overview of ACF's Contracting Process

The Federal Acquisition Regulation (FAR) guides the acquisition process by which executive agencies of the Federal Government, including ACF, use appropriated funds to contract for goods and services. The HHS Acquisition Regulation established uniform HHS policies and procedures that implement and supplement the FAR.

ACF's Office of Government Contracting Services (GCS) awards contracts for ACF, including ORR.[8] ACF's acquisition process begins when a program office, such as ORR, identifies a need for a service and submits to GCS an acquisition package that, at a minimum, includes a statement of work (SOW) that identifies the services to be performed, estimates how much the work will cost, provides any preliminary market research the program office conducted, and includes an acquisition plan showing that the contract meets the Government's needs.

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[7] During an influx of unaccompanied alien children, ORR may not have sufficient bed space available within its licensed care provider network to place children. In this situation, ORR arranges for the use of an influx care facility to provide supplemental bed capacity. Emergency intake sites are facilities designed to meet immediate sheltering needs for mass care with basic standards when there is a severe shortage of licensed facilities and influx care facilities.

[8] GCS was established in June 2020 and in October 2020 began to provide acquisition and support services to ACF offices, including ORR.

GCS reviews the acquisition package and works with program officials to ensure that both parties understand the contract requirements. GCS conducts any additional market research as needed to determine which contract and acquisition strategy to use (including contract type and contract line-item number (CLIN)).[9] GCS, in coordination with other stakeholders, such as the HHS Office of the General Counsel (OGC), senior procurement executive staff, program managers, and contracting officer's representatives (CORs), provides approvals of the acquisition plan. After the plan is approved, GCS issues a solicitation and receives proposals submitted by contractors in response to the solicitation. After GCS, in conjunction with the program office and OGC, conducts source selection activities and the necessary reviews are completed, the contract is awarded by the GCS contracting officer. The contractor begins work on the contract and submits invoices to the COR for review in accordance with timeframes outlined in the applicable contract requirements.

Professional Support Services Contract Awarded to Deloitte

On behalf of ACF, GCS awarded a time-and-materials contract to Deloitte to provide professional services and subject matter experts to support ORR's efforts in addressing the influx of unaccompanied alien children.[10] The contract was awarded for $301,747 and covered March 18 through June 18, 2021. The contract was subsequently modified 12 times, extending the period of performance to December 27, 2021, and increasing the value of the contract to approximately $19.4 million. According to ACF, it modified the contract primarily to increase the level of effort of professional support services and to ensure continuity of services until a new contract was put into place.

Under the contract, Deloitte was to perform work at ACF headquarters in the District of Columbia and at emergency intake sites located throughout the United States. Although HHS—and in turn, ACF—has the authority to use personal services contracts for experts and consultants, the Deloitte contract for professional support services was awarded as a nonpersonal services contract.[11]

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[9] The CLIN is an identifier assigned to specific items or services listed within a contract. CLINs improve the accuracy, traceability, and usability of procurement data and define deliverables or organize information about deliverables (FAR § 4.1001). Each line item describes characteristics of the item purchased.

[10] A time-and-materials contract is used to procure services at a predetermined fixed labor rate, plus the actual cost for any materials, and may be used only when it is not possible at the time of awarding the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. A time-and-materials contract provides no positive profit incentive to the contractor for cost control and labor efficiency.

[11] A service contract may be either a nonpersonal or personal services contract. A *nonpersonal services contract* is a contract under which the personnel providing the services are not subject, either by the contract's terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the Government and its employees (FAR § 37.101). A *personal services contract* is characterized by the employer-employee relationship it creates between the Government and the contractor's personnel. This relationship may be created when contractor personnel are subject to relatively continuous supervision and control by a Government officer or employee during contract performance (FAR § 37.104).

Related Office of Inspector General Work

Since responsibility for unaccompanied alien children was transferred to HHS by the Homeland Security Act of 2002, OIG has examined various aspects of the UAC Program, including whether ORR was prepared to take children into HHS custody, whether ORR-funded care provider facilities met safety standards for the care and release of children in their custody, and whether ORR care provider facilities were addressing children's medical and mental health needs. Specific OIG reports involving emergency intake sites include a June 2022 report that examined procedures for COVID-19 testing and for protecting children and employees against the spread of COVID-19 at an influx care facility and the emergency intake sites, a September 2022 report that examined experiences of staff at the Fort Bliss emergency intake site, and a May 2023 report on employee background checks at an influx care facility and emergency intake sites. A March 2024 OIG Issue Brief identified opportunities for ACF to improve its management of emergency or influx facilities.[12]

HOW WE CONDUCTED THIS AUDIT

We reviewed ACF's processes for awarding and monitoring the Deloitte contract and related contract modifications. We examined all 17 invoices that ACF paid during the period of March 18 through December 27, 2021, totaling $18.1 million.[13] We also reviewed documentation maintained in the contract files and conducted interviews with ACF officials and Deloitte personnel. Additionally, we requested and reviewed selected ACF officials' emails related to the Deloitte contract for the period of March 1 through December 27, 2021, to obtain any insights into: (1) ACF's decision to procure professional support services and award the contract to Deloitte and (2) ACF's monitoring of the contract.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix A describes our audit scope and methodology.

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[12] OIG reports related to the UAC Program can be found at https://oig.hhs.gov/reports-and-publications/featured-topics/uac/index.asp.

[13] The amount that ACF awarded for the contract was $19.4 million; however, the total amount of invoices that ACF approved was $18.1 million.

FINDINGS

ACF did not award and monitor the Deloitte contract in accordance with Federal requirements and HHS policies and procedures.

Awarding of the Contract

ACF did not award the Deloitte contract in accordance with the Federal Acquisition Regulation (FAR). Specifically, ACF did not solicit and receive offers from two or more responsible offerors as required by the FAR for a time-and-materials contract when using other than full and open competition procedures, potentially denying the Federal Government an opportunity to receive higher quality, lower cost services from another vendor.

Monitoring of the Contract

ACF did not monitor the Deloitte contract in accordance with Federal laws and regulations, ACF policy, and the contract terms and conditions. Specifically:

- Although ACF awarded the Deloitte contract as a nonpersonal services contract, ACF administered the contract in a manner that created the appearance of an employer-employee relationship where Deloitte personnel were functioning as Government employees, a characteristic of a personal services contract which may have violated civil service laws requiring Government employees to be hired through competitive appointment or other required procedures. In addition, because ACF limited the ability of the COR to provide oversight by condoning the practice of assigning ad hoc requests directly to Deloitte and its subcontractors, the Government was at risk of paying for services that may have been outside of the scope of the contract.

- ACF allowed Deloitte and its subcontractors to perform inherently governmental functions, such as providing direction and control over Federal employees, thereby increasing the risk that ACF would lose control over and accountability for UAC Program decisions.

- ACF did not review and approve invoices in accordance with the FAR and the contract terms and conditions. As a result, ACF paid Deloitte approximately $5 million for potentially unallowable costs and may have violated the Antideficiency Act by paying $1.5 million for services outside of the CLINs' periods of performance.

- ACF did not provide written consent for Deloitte to use subcontractors.

- ACF did not verify that Deloitte and its subcontractors completed required training for information security and records management, increasing the potential risk of information loss (i.e., the personally identifiable information of unaccompanied alien children) or Privacy Act violations.[14]

For the following reasons, ACF did not comply with Federal laws and regulations, ACF policy, and the contract terms and conditions for awarding and monitoring the contract:

- ACF's policies and procedures did not address emergency situations, such as additional capacity needed to manage the increasing numbers of unaccompanied alien children on an expedited time schedule. ACF officials stated that they were faced with tight deadlines and a shortage of staff.

- Due to ACF staff shortages and the contract language regarding services to be performed, Deloitte employees and its subcontractors were placed in a position to provide direction and control over ACF employees.

- All charges to the contract were for professional support services, and the contract did not require identifying specific tasks to be performed to accomplish the needs of ACF. Moreover, ACF did not have a process to verify costs. Therefore, ACF reviewed invoices only to ensure that there were funds available to pay the invoices instead of reviewing them to determine whether the Government received what it paid for.

- Deloitte did not seek approval from ACF for using subcontractors, and ACF staff were not aware that the contract required Deloitte to obtain ACF's written consent for using subcontractors.

- ACF did not have procedures for tracking the training efforts of contractors and their subcontractors.

Because ACF did not adequately monitor the contract, there was an increased risk of payment for unallowable costs or for services not performed.

ACF DID NOT AWARD THE DELOITTE CONTRACT IN ACCORDANCE WITH THE FEDERAL ACQUISITION REGULATION

ACF did not award the Deloitte contract in accordance with the FAR. Specifically, ACF did not solicit and receive offers from two or more responsible offerors as required by the FAR for a time-and-materials contract when using other than full and open competition procedures.

[14] The Privacy Act establishes a code of fair information practices that governs collection, maintenance, use, and dissemination of information about individuals that is maintained in systems of records by Federal agencies (5 U.S.C. § 552a).

ACF Did Not Solicit and Receive Offers From Two or More Responsible Offerors

An agency may use time-and-materials contracts to acquire commercial services using other than full and open competition procedures, provided the agency receives offers that satisfy the Government's expressed requirements from two or more responsible offerors (FAR § 12.207(b)(1)(i)(B)).

ACF did not solicit and receive offers from two or more responsible offerors as required by the FAR for awarding a time-and-materials contract when using other than full and open competition procedures. Instead, on the basis of prior market research and ACF's prior contracting experience with Deloitte, GCS made the decision to solicit a contract proposal from only Deloitte after confirming that Deloitte could begin to provide required services quickly. GCS received and reviewed Deloitte's proposal, which was approved by ORR program officials.

ACF officials stated that because of the situation at the border and the need to procure services quickly, the normal full and open contracting process could not be followed. In addition to the tight deadlines, ACF officials stated that they were faced with a shortage of staff.

Also, ACF's existing procedures at the time the contract was awarded did not address awarding contracts in emergency situations. Although ACF established written procurement procedures for emergency situations toward the end of the contract period, these procedures did not address compliance with additional FAR requirements for specific contract types, such as time-and-materials contracts. ACF had the opportunity to potentially receive higher quality, lower cost services if it had solicited offers from more than one contractor.

ACF DID NOT MONITOR THE DELOITTE CONTRACT IN ACCORDANCE WITH FEDERAL LAWS AND REGULATIONS, ACF POLICY, AND THE CONTRACT TERMS AND CONDITIONS

ACF did not monitor the Deloitte contract in accordance with Federal laws and regulations, ACF policy, and the contract terms and conditions. Specifically, ACF:

- violated the FAR requirements for a nonpersonal services contract by administering the contract in a manner that created the appearance of an employer-employee relationship where ACF officials exerted a level of control over the contractor's work,
- allowed Deloitte and its subcontractors to perform inherently governmental functions,
- did not review and approve Deloitte invoices in accordance with the FAR and the contract terms and conditions,
- did not provide written consent for Deloitte to use subcontractors, and
- did not verify that Deloitte and its subcontractors completed required training.

ACF Administered the Contract in a Manner That Created the Appearance of an Employer-Employee Relationship

ACF awarded the Deloitte contract as a nonpersonal services contract. For a nonpersonal services contract, the FAR requires that personnel providing the services are not subject, either by the contract's terms or by the manner of its administration, to the supervision and control usually prevailing in relationships between the Government and its employees.

Government employees must avoid continuous supervision of contractor personnel to fulfill the Government's contract requirements.[15] The contracting officer or COR is responsible for ensuring that sufficient direction is provided to contracting personnel without assuming supervision and control over the contractor's day-to-day activities. Government employees may work directly with contractor personnel and assign tasks; however, those tasks need to be communicated to the contracting officer or COR in a timely manner to ensure appropriate contract management.[16]

During its interactions with Deloitte under this contract, ACF officials exerted a level of control over Deloitte's work that violated the FAR requirements for a nonpersonal services contract. Specifically, ACF's administration of the Deloitte contract created the appearance of an employer-employee relationship between the Government and contractor and subcontractor personnel.

Deloitte and its subcontractors were subject to relatively continuous supervision by ACF leadership rather than performing activities on their own initiative and participated in situations that had the appearance of an employer-employee relationship. ACF staff at both Headquarters and emergency intake sites stated that Deloitte and its subcontractors had direct access to and reported directly to the then ACF Acting Assistant Secretary and other ACF leadership. In addition, Deloitte and its subcontractors performed tasks comparable to the duties of certain ORR offices, which added to the appearance of an employer-employee relationship.[17] For example, the ORR Office of Policies and Procedures is responsible for developing briefing materials for ORR, ACF, and the Department on ORR matters. Deloitte personnel and its subcontractors were tasked with drafting materials to brief the then HHS

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[15] This continuous supervision is a characteristic of an employer-employee relationship, which should not be present in a nonpersonal services contract.

[16] FAR § 37.114(a) states that a sufficient number of qualified Government employees are assigned to oversee contractor activities. FAR § 1.602-2 states that contracting officers are responsible for ensuring performance of all necessary actions for effective contracting and ensuring compliance with the terms of the contract. FAR § 1.604 states that a COR assists in the technical monitoring or administration of a contract. FAR § 37.504 states that contracting officials (such as contracting officers and CORs) should ensure that best practices techniques are used when contracting for services and in contract management and administration.

[17] From our analysis, we noted that Deloitte and its subcontractors carried out tasks that were comparable to several ORR offices, including the ORR Office of the Director, ORR Division of Policies and Procedures, and ORR Division of Strategic Planning, Budget, and Analysis.

Secretary outlining major policy and process changes during the influx of unaccompanied alien children and highlighting measures taken to monitor performance. Furthermore, emails that included ACF officials and Deloitte employees indicated that there appeared to be a core group of Deloitte employees and Deloitte subcontractors that were working directly with the then ACF Acting Assistant Secretary and the then ORR Director.

For example, in one email, the then ORR Director introduced a Deloitte subcontractor to ACF officials and stated that the subcontractor was responsible for "helping to get me organized and follow up on many tasks." Another email identified six Deloitte employees as "the Deloitte team supporting the [then] ACF [Acting] Assistant Secretary." Additionally, other emails had examples of the then ACF Acting Assistant Secretary and the then ORR Director as well as other ACF officials assigning ad hoc work to Deloitte and its subcontractors and not involving the COR, giving the appearance of an employer-employee relationship. For example, the then ORR Director requested that a Deloitte employee draft a policy memo to be shared with other ACF officials. In another example, the then ACF Acting Assistant Secretary directed a Deloitte subcontractor to work with HHS officials to develop training materials. In both examples, the COR was not notified of the request.

ACF, in effect, condoned the practice of its officials assigning ad hoc tasks directly to Deloitte and its subcontractors without notice to or involvement of the COR. Therefore, the COR was unable to monitor specified aspects of contractor performance, including whether the work met the standards set forth in the contract and whether the services fell within the scope of performance.[18] Consequently, ACF limited the ability of the COR to effectively oversee the contract, placing the Government at risk of paying for services that may have been outside of the scope of the contract. Moreover, ACF's use of contractor personnel as if they were Government employees may have circumvented civil service laws that require hiring Federal employees under competitive appointment or other allowable procedures.[19]

ACF officials explained that there were not enough ORR staff, the Federal hiring process did not allow ACF to fill positions quickly enough, and program offices were given extra responsibilities and faced tight deadlines.

ACF Allowed Deloitte and Its Subcontractors To Perform Inherently Governmental Functions

Creating an environment in which Federal employees and contractors work closely together to achieve similar goals is appropriate when the relationship between the two is effectively managed. However, when contractors will perform services like those reserved for Federal employees, there is an increased risk of loss of Government control over and accountability for

[18] The COR told us that ACF added language to the statement of work and the contract was modified in October 2021 to state that Deloitte must notify the COR of work products that were not requested by the COR. However, we noted that Deloitte and its subcontractors continued to receive ad hoc requests from ACF officials without the knowledge of the COR and did not notify the COR of these requests.

[19] FAR § 37.104(a).

mission-related policy and program decisions. ACF allowed Deloitte and its subcontractors to direct ACF employees and perform other inherently governmental functions.

Federal Requirements

The FAR states that contracts must not be used for the performance of inherently governmental functions (FAR § 7.503(a)). The FAR defines an inherently governmental function as follows: ". . . a function that is so intimately related to the public interest as to mandate performance by Government employees. An inherently governmental function includes activities that require either the exercise of discretion in applying Government authority, or the making of value judgments in making decisions for the Government."[20] The FAR also provides a list of examples of functions considered to be inherently governmental or that must be treated as such.[21]

Deloitte and Its Subcontractors Directed ACF Employees and Performed Other Inherently Governmental Functions

Management of critical operations and processes at emergency intake sites, including management of staff, should have been performed by Federal employees. However, our review of emails and interviews with ACF staff found that Deloitte and its subcontractors performed inherently governmental functions, such as directing ACF employees, developing standard operating procedures, and interviewing Federal employees for volunteer positions.

For example, ACF leadership appointed a Deloitte subcontractor to lead case management, which is a critical function at emergency intake sites. This subcontractor was given responsibility for providing direction and control over Federal employees. Specifically, ACF staff who were at the emergency intake sites explained that ACF staff reported directly to this subcontractor. In addition, Deloitte was involved in interviewing Federal volunteers and made decisions involving value judgments for the Government as to which volunteers were good fits to fill critical roles at emergency intake sites.

Factors That Contributed to Deloitte and Its Subcontractors Performing Inherently Governmental Functions

Several factors contributed to Deloitte and its subcontractors performing inherently governmental functions: (1) the scope of work in the contract outlined duties to be performed by Deloitte and its subcontractors that were inherently governmental in nature, (2) ACF officials stated they were faced with tight deadlines and additional responsibilities caused by the influx of unaccompanied alien children, and (3) ACF officials stated that there was a shortage of ORR staff and that the Federal hiring process did not allow ACF to fill positions quickly enough.

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[20] FAR § 2.101.

[21] FAR §§ 7.503(c)(1) through (20).

ACF Did Not Review and Approve Invoices in Accordance With the Federal Acquisition Regulation and the Contract Terms and Conditions

ACF did not review and approve invoices in accordance with the FAR and the terms and conditions of the contract. Specifically, ACF did not monitor Deloitte and its subcontractors for dates and hours worked, which is important for any contract but especially for a time-and-materials contract; such a contract requires diligent management and oversight to ensure that the Government received what it paid for. As a result, ACF paid approximately $5 million for potentially unallowable costs and may have violated the Antideficiency Act by paying $1.5 million for services outside CLIN periods of performance.

Federal Requirements

A proper invoice must include the description, quantity, unit of measure, unit price, and extended price of the supplies delivered or services performed (FAR § 32.905(b)(iv)).

All invoice payments, with the exception of interim payments on cost reimbursement contracts for services, must be supported by a receiving report or other Government documentation authorizing payment (e.g., a Government-certified voucher), including the signature, printed name, title, mailing address, and telephone number of the designated Government official responsible for acceptance or approval functions (FAR § 32.905(c)).

Section G.4 of the Deloitte contract describes the following requirements related to invoices: (1) the invoice shall break out price or cost by CLIN as specified in the pricing section of the contract; (2) a proper invoice, with all required backup documentation, shall be sent electronically, via email, to the COR mailbox; and (3) the contractor shall submit invoices under this contract once per month no later than the 15th of the current month for performance in the previous month.

The ACF GCS *Invoice Processing Procedures* manual states under the contracting officer's responsibilities that the COR should establish and maintain a contract expenditure log that updates invoice information for each contract (§ 4.2.1). The manual also notes that the contracting officer or contracting specialist shall review the invoice within 4 calendar days of receipt for accuracy and completeness to ensure that it is proper.

Regarding overtime, the contracting officer shall review the contractor's request for overtime (FAR § 22.103-4(a)). Approval of the use of overtime may be granted by an agency approving official after determining in writing that overtime is necessary to: (1) meet essential delivery or performance schedules, (2) make up for delays beyond the control and without the fault or negligence of the contractor, or (3) eliminate foreseeable extended production bottlenecks that cannot be eliminated in any other way (FAR § 22.103-4(a)). Additionally, contracting officer approval of payment of overtime premiums is required for time-and-materials and labor-hour contracts (FAR § 22.103-4(c)).

Deloitte Invoices Were Not Properly Reviewed and Approved

ACF did not review the Deloitte invoices for accuracy and completeness. Specifically, ACF did not provide documentation that included the designated Government official approval information and did not maintain a contract expenditure log that tracked invoice approvals and denials.

In addition, ACF staff approved contract invoices that did not comply with the FAR or the terms and conditions of the contract. From our review, we found the following:

- None of the invoices included a description of tasks performed for the hours or amount that Deloitte charged, and the invoices included only a general description of "professional support services."

- Invoices were not submitted with supporting documentation and within the timeframe required by the contract (i.e., by the 15th of the month). For the month of April, Deloitte did not submit an invoice as required. Instead, Deloitte included the April charges on later monthly invoices.

- Nonlabor invoices for travel costs such as airfare, hotel, and rental cars did not contain transaction dates, and two of the three nonlabor invoices did not specify a CLIN.

ACF staff involved with the Deloitte contract were unfamiliar with FAR requirements and ACF policy for reviewing and approving invoices. During the contract period, CORs were assigned the responsibility for processing invoices. According to one COR, this contract was very complex and hard to manage. In addition, the COR explained that invoices were paid based on the funds available on the CLIN. Once the amount on the CLIN was exhausted, the COR would automatically move to the next CLIN instead of using the appropriate CLIN and associated funding source for the work completed and being reimbursed.

Although the ACF GCS *Invoice Processing Procedures* manual provides procedures for reviewing invoices, staff did not follow the invoice review process. Additionally, ACF's policy did not provide specific steps to verify the costs billed under a time-and-materials contract.[22] Thus, ACF was unable to validate that the Government received what it paid for. ACF also could not be sure that costs were not duplicated, because invoices contained only a generic description of "professional support services." Closeout of the contract may be impacted because ACF cannot

[22] In a prior report, *The Office of Refugee Resettlement Did Not Award and Manage the Homestead Influx Care Facility Contracts in Accordance With Federal Requirements* (A-12-20-20001), Dec. 18, 2020, we identified contract management deficiencies, including invoice review of contract costs, and recommended that ACF establish written policies and procedures for reviewing invoices. In its written comments on the report, ACF stated that it had established a written policy and procedure for invoice processing. For this audit, we reviewed ACF's written policy and procedure and determined that it did not address the specific invoicing issues we identified in this report.

validate whether the contractor has fully satisfied its contract obligations.[23] The closeout process is generally the last opportunity for improper contract payments to be detected and recovered, and a delayed closeout poses a financial risk to agency funds. The following section provides additional details on potentially unallowable costs.

ACF Paid for Potentially Unallowable Costs

As a result of ACF's not properly reviewing and approving invoices, ACF paid Deloitte for potentially unallowable costs. We reviewed invoices that included Deloitte and its subcontractors' labor hours and nonlabor costs. The following table summarizes ACF's payment of $4,968,857 for potentially unallowable costs.

Table: Potentially Unallowable Labor and Nonlabor Costs Paid by ACF

Potentially Unallowable Costs	Amount
Hours charged by Deloitte and its subcontractors that did not identify CLINs	$2,022,468
Hours charged for unapproved overtime (7,890 hours)*	$1,362,621
Hours charged on invoices that did not include specific dates when each employee performed work	$1,226,649
Nonlabor costs that were not supported by receipts	$244,174
Hours worked by three subcontractors that did not match final invoices (691 hours)†	$112,945

*ACF did not grant Deloitte approval to charge overtime. The invoices we reviewed did not separate overtime and regular time. We calculated overtime for anyone who charged more than 40 hours in a 7-day workweek. In addition, ACF's policies and procedures did not include guidance on overtime procedures, and the contract did not include any language related to overtime.

† The subcontractor invoices we received from Deloitte showed that the subcontractors worked a total of 1,282 hours, but the final invoice paid by ACF showed 1,973 hours.

For example, ACF paid $1,226,649 for invoices that did not include specific dates when each employee performed work. The invoices included only the total amount of hours that each employee worked. Without specific dates, it would be difficult for the COR to review and approve invoices according to Federal requirements. As a result, there was an increased risk of overpayments, which could include duplicative payments for services already provided and payments made outside of CLINs' periods of performance.

[23] A contract closeout is initiated after evidence is received of the contract's physical completion (FAR § 4.804-5). A contract is considered to be physically completed when: (1) the contractor has completed the required deliveries, and the Government has inspected and accepted the supplies; or (2) the contractor has performed all services and the Government has accepted these services (FAR § 4.804-4). Reviewing the closeout of the Deloitte contract was outside the scope of our audit.

ACF May Have Violated the Antideficiency Act by Paying for Services Outside CLIN Periods of Performance

Another result of ACF not properly reviewing and approving invoices is that ACF may have violated the Antideficiency Act by paying for services outside of a CLIN's period of performance.[24] ACF paid $1,490,751 for time charged by Deloitte and its subcontractors that was outside of the CLINs' periods of performance. This payment occurred because ACF paid invoices based on the funds available on the CLINs. When we reconciled the invoices with ACF's accounting system payment report, we noted that Deloitte would bill an amount for a specific CLIN, but ACF would pay using funds from another CLIN. ACF's policies and procedures did not include procedures for verifying that: (1) an invoice CLIN that was billed matched the CLIN's period of performance and (2) contract expenditures were paid using the appropriate CLINs. ACF's payment for services that were performed outside of a CLIN's period of performance (and associated funding) potentially violated the Antideficiency Act.[25]

ACF Did Not Provide Written Consent for Deloitte To Use Subcontractors

The Deloitte contract (section I, "Contract Clauses") states that the contractor must comply with FAR section 52.244-2, which requires submission of specific information related to a subcontractor and requires that the contracting officer give written consent that the prime contractor is permitted to begin using that subcontractor before the subcontractor starts work. Additionally, section H.3 ("Baseline Security Requirements") of the contract states that "the contractor is required to obtain the Contracting Officer's approval prior to engaging in any contractual relationship (sub-contractor) in support of this contract requiring the disclosure of information, documentary material and/or records generated under, or relating to, contracts." The contracting officer responsible for consent shall review the contractor's notification and supporting data to ensure that the proposed subcontract is appropriate for the risks involved and consistent with current policy and sound business judgment (FAR § 44.202-1(b)).

ACF paid more than $1.3 million for more than 6,200 hours worked by Deloitte subcontractors even though ACF never provided written consent for Deloitte to use subcontractors, as required by the FAR and the terms and conditions of the contract. ACF officials stated that they were not aware of requirements in the Deloitte contract related to written approval of subcontractors.

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[24] The balance of an appropriation or a fund limited for obligation to a definite period is available only for payment of expenses properly incurred during the period of availability or to complete contracts properly made within that period of availability and obligated consistent with section 1501 of this Title (31 U.S.C. § 1502(a)). However, the appropriation or fund is not available for expenditure for a period beyond the period otherwise authorized by law (31 U.S.C. § 1502(a)).

[25] The Antideficiency Act (31 U.S.C. § 1341(a)(1)) prohibits Federal employees from making obligations or expenditures in excess of an apportionment or reapportionment, or in excess of the amount permitted by agency regulations (31 U.S.C. § 1517(a)). Once it is determined that there has been a violation of 31 U.S.C. sections 1341(a), 1342, or 1517(a), the agency head "shall report immediately to the President and Congress all relevant facts and a statement of actions taken" (31 U.S.C. §§ 1351 and 1517(b)).

ACF Did Not Verify That Deloitte and Its Subcontractors Completed Required Training

The Deloitte contract (section H.3, "Baseline Security Requirements") states that training is mandatory for all contractor staff: "all Contractor (and/or any subcontractor) employees assigned to work on this contract shall complete the applicable HHS/ACF Contractor Information Security Awareness, Privacy, and Records Management training (provided upon contract award) before performing any work under this contract."

ACF did not verify that Deloitte and its subcontractors completed required training on the responsibilities for properly handling and protecting Government information. Specifically, of the 213 Deloitte employees (including subcontractors) who worked on the Deloitte contract, 101 employees did not take privacy and security training, and 90 employees did not take records management training. Additionally, training documentation that ACF provided to us did not include training completion dates. Therefore, we were unable to determine whether the training was completed before those Deloitte employees (including subcontractors) worked on the contract, as required by the terms and conditions of the contract.

ACF did not have policies and procedures for tracking the training efforts of Deloitte and its subcontractors that worked on the contract. As a result, there was an increased risk of loss to the Government in the form of Federal information or systems that could be subjected to unauthorized access, use, disclosure, disruption, modification, or destruction. There was also an increased risk that personally identifiable information of children under ACF's care may not have been protected and an increased risk of Privacy Act violations.

CONCLUSION

In response to an unprecedented number of unaccompanied alien children arriving at the U.S. southern border in 2021, ACF rapidly increased the number of shelter beds and related services in its provider network. ACF awarded numerous contracts to open temporary emergency intake sites and reactivated an existing influx care facility. During a prior influx, we audited ACF's awarding of contracts to operate an influx care facility and identified several deficiencies related to awarding and management of the contracts and invoice review of contract costs.[26] Our audit of the Deloitte contract identified similar deficiencies, demonstrating the need for ACF to better prepare for its contracting needs.

For this audit, ACF did not award and monitor the Deloitte contract—which was used to provide professional support services in addressing the influx of unaccompanied alien children—in accordance with Federal requirements. We found that in awarding the contract, ACF did not solicit and receive offers from two or more offerors as required by the FAR. Furthermore, ACF's policies and procedures did not address emergency situations, such as additional capacity needed to manage the increasing numbers of unaccompanied alien children on an expedited

[26] OIG, *The Office of Refugee Resettlement Did Not Award and Manage the Homestead Influx Care Facility Contracts in Accordance with Federal Requirements* (A-12-20-20001), Dec. 18, 2020.

time schedule. In monitoring the contract, ACF: (1) administered the contract in a manner that created the appearance of an employer-employee relationship, (2) allowed Deloitte and its subcontractors to perform inherently governmental functions, (3) did not review and approve invoices in accordance with the FAR or the terms of the contract, (4) did not provide written consent for Deloitte to use subcontractors, and (5) did not verify that Deloitte and its subcontractors completed required training. Because ACF did not adequately award and monitor the contract, there was an increased risk of waste and abuse resulting in potentially unallowable costs and Antideficiency Act violations.

RECOMMENDATIONS

We recommend that the Administration for Children and Families:

- update its policies and procedures for awarding contracts for other than full and open competition in emergency situations to incorporate FAR requirements for time-and-materials contracts;

- provide training to program officials and contracting staff as appropriate that covers requirements for:

    - administering nonpersonal services contracts for professional support services,

    - specifying that contracts must not be used for the performance of inherently governmental functions,

    - providing written consent for the use of subcontractors,

    - reviewing and approving invoices, and

    - maintaining documentation to support costs for services performed;

- update its policies and procedures for receipt and oversight of deliverables and to incorporate Federal requirements related to the: (1) review, approval, and monitoring of invoices and (2) use of CLINs to properly account for and pay contractor expenditures;

- review potentially unallowable costs and obtain supporting documentation or take appropriate action to recoup from Deloitte any improperly paid amounts for the following:

    - $2,022,468 for invoices that did not identify CLINs to track expenses,

    - $1,362,621 in overtime charges,

    - $1,226,649 of labor charges for invoices that did not include specific dates when each employee performed work,

    - $244,174 in nonlabor costs that were not supported by receipts, and

    - $112,945 of unsupported subcontractor charges;

- review and correct potential Antideficiency Act violations by deobligating and obligating funds to appropriate CLINs used and report an Antideficiency Act violation if the violation cannot be corrected; and

- develop and implement policies and procedures:

    - requiring contracts to include FAR clauses related to overtime requirements in contracts and

    - for tracking and verifying that all contractor staff (including subcontractors) assigned to work on a contract complete required trainings before performing any work under the contract (or within the allowed time).

ACF COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

In written comments on our draft report, ACF concurred with the first five recommendations and partially concurred with the last recommendation. ACF also described actions it has taken or plans to take to address the recommendations. ACF's comments appear in their entirety as Appendix B.

ACF COMMENTS

For our first recommendation, ACF stated that GCS developed an emergency contracting guidebook in 2022 designed to address preplanning considerations for the award and management of contracts during emergencies. ACF explained that the guidebook and FAR part 18 and section 16.601 constitute a comprehensive framework that GCS utilizes during the procurement process for the selection of contract types, including but not limited to time-and-materials contracts, to effectively address the specific demands and unique requirements of emergency acquisitions.

For our second recommendation, ACF stated that it developed a training program in 2022 aimed at addressing identified operational skill gaps within its acquisition function. The training "outlines specific criteria for agencies to assess and avoid awarding personal service contracts" and includes guidance on obtaining written consent for use of subcontractors and reviewing and approving invoices. ACF also stated that it began implementing a standard operating procedure in 2024 for COR file management, to include standardized monitoring and surveillance processes, thereby providing effective and consistent oversight of contractors.

For our third recommendation, ACF stated that GCS is ensuring that its internal policies reflect the COR's responsibility for reviewing and monitoring invoices to ensure receipt of deliverables, and compliance with contract ceilings and CLINs. In addition, ACF stated that it will schedule additional policy updates for completion by the third quarter of FY 2025.

For our fourth recommendation, ACF stated that GCS will partner with ORR to conduct a postaward recovery audit to thoroughly examine all relevant contractor records, supporting documentation, and other materials related to payments that OIG identified as potentially unsupported or unallowable costs. ACF stated that GCS will exercise all appropriate mechanisms to timely recover any payments determined to be unsupported or ineligible.

For our fifth recommendation, ACF stated that GCS will conduct an internal review by the third quarter of FY 2025 to determine whether a potential Antideficiency Act violation exists by evaluating the proper CLIN structure for the contract. ACF stated that if an Antideficiency Act violation exists, it would exercise appropriate reporting measures required by law.

ACF partially concurred with our last recommendation. ACF stated that GCS will provide targeted acquisition training to its workforce to enforce compliance with FAR prescriptions for the inclusion of FAR clauses related to overtime requirements in contracts when deemed appropriate. However, ACF stated that it finds it challenging to fully concur with our recommendation to verify that subcontractor staff complete required trainings. ACF stated that FAR section 42.202 explicitly states that prime contractors bear the responsibility for managing their subcontractors and noted that the COR and the contracting officer do not have an appropriate way to track subcontractor staff.

OFFICE OF INSPECTOR GENERAL RESPONSE

Regarding our first recommendation, although the ACF contracting guidebook addresses awarding contracts for other than full and open competition in emergency situations, it does not contain guidance related to FAR section 12.207(b)(1)(i)(B), which stipulates that two or more offers must be solicited and received when using a time-and-materials contract for other than full and open competition.

Regarding our second, third, fourth, and fifth recommendations, we appreciate the actions that ACF indicated it has taken or plans to take.[27] After reviewing ACF's comments, we believe that the actions ACF described, when fully executed, should resolve these recommendations. Once ACF submits documentation confirming that it has conducted the planned actions, we will reassess the status of these recommendations consistent with our normal audit resolution process.

[27] For our fourth recommendation, after the draft report was issued, we updated the "overtime charges" line item totaling $1,363,283 to remove $662 because these charges were also included in the "unsupported subcontractor charges" line item totaling $112,945. The revised "overtime charges" line item in this final report is $1,362,621.

Regarding the part of our last recommendation that calls for ACF to implement policies and procedures requiring contracts to include FAR clauses related to overtime requirements, we believe that ACF's training of its workforce will help ensure that all required FAR clauses are included in contracts but that these actions do not fully address our recommendation. Implementing policies and procedures requiring the inclusion of FAR overtime clauses in contracts will better position ACF to identify and assess whether contractor overtime costs are allowable.

Regarding the part of our last recommendation that calls for ACF to implement policies and procedures for tracking and verifying mandatory trainings of contractor staff, we agree with ACF that subcontractor oversight falls on the prime contractor. We note that the contract required Deloitte to provide training records for all contractor employees and subcontractors to the COR within 30 days after the contract was awarded. We commend ACF for incorporating this contract requirement because it serves as a good practice to reduce the risk that Federal information, including personally identifiable information, could be subjected to unauthorized access, use, or destruction. We suggest that the COR use the training records (which were required to be provided under the terms of the Deloitte contract) to verify subcontractor completion of mandatory trainings. To reduce the administrative burden on ACF, future contracts could be structured to specifically require submission of subcontractor training records to the prime contractor for verification that mandatory trainings were completed.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

We reviewed ACF's processes for awarding and monitoring the Deloitte contract and related contract modifications. We examined all 17 invoices that ACF paid during the period of March 18 through December 27, 2021, totaling $18.1 million. We also examined documentation maintained in the contract files and conducted interviews with ACF officials and Deloitte personnel.

We did not assess ACF's overall internal control structure. Rather, we limited our review of internal controls to those applicable to our objective. Specifically, we reviewed ACF's policies and procedures related to contract awarding and management.

We conducted our audit from December 2021 through August 2024.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal requirements and guidance;
- interviewed ACF staff to obtain an understanding of its processes for awarding and monitoring the Deloitte contract;
- interviewed Deloitte personnel to obtain an understanding of services provided under the Deloitte contract;
- reviewed the terms and conditions of the Deloitte contract and its 12 modifications;
- reviewed the SOW to identify deliverables required by the contract;
- confirmed the total amount paid under the contract;
- reviewed all invoices to determine whether they included data required by the FAR;
- analyzed invoices to determine the: (1) number of hours worked by and amounts paid to Deloitte and its subcontractors and (2) number of staff who worked on the Deloitte contract;
- requested and reviewed selected ACF officials' emails related to the Deloitte contract for the period of March 1 through December 27, 2021, to obtain any insights into ACF's:

(1) decision to procure professional support services and award the contract to Deloitte and (2) monitoring of the contract;

- requested and reviewed training documentation for Deloitte and its subcontractors; and

- discussed the results of our audit with ACF officials.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX B: ACF COMMENTS

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December 13, 2024

Juliet T. Hodgkins
Principal Deputy Inspector General
U.S. Department of Health and Human Services
330 Independence Avenue, SW
Washington, D.C. 20201

Dear Principal Deputy Inspector General Hodgkins:

The Administration for Children and Families (ACF) appreciates the opportunity to respond to the Office of Inspector General (OIG) draft report titled, *ACF Used Contractor Personnel To Perform Inherently Governmental Functions and Paid Millions in Potentially Unallowable Costs,* A-12-22-10000. Please find our comments and response to the draft report recommendations below.

Recommendation 1: ACF update its policies and procedures for awarding contracts for other than full and open competition in emergency situations to incorporate FAR requirements for time-and materials contracts.

ACF Response: ACF concurs with this recommendation. In 2022, ACF's Government Contracting Services (GCS) developed an emergency contracting guidebook designed to address pre-planning considerations for the award and management of contracts during emergencies. This guidebook emphasizes acquisition flexibilities intended to enhance the responsiveness and adaptability of the acquisition workforce in critical situations for various types of contract awards. Federal Acquisition Regulation (FAR) Part 18 delineates specific acquisition flexibilities applicable to emergency procurements and outlines procedures for streamlining the standard acquisition process. In addition, FAR Part 16.601 provides detailed descriptive guidance on the implementation of time-and-material contracts. Collectively, these FAR provisions and the guidebook constitute a comprehensive framework of guidelines and procedures that GCS utilizes during the procurement process for the selection of contract types, including but not limited to, time-and-materials contracts, to effectively address the specific demands and unique requirements of emergency acquisitions.

Recommendation 2: ACF provide training to program officials and contracting staff as appropriate that covers requirements for:

- administering nonpersonal services contracts for professional support services, specifying that contracts must not be used for the performance of inherently governmental functions,
- providing written consent for the use of subcontractors,
- reviewing and approving invoices, and
- maintaining documentation to support costs for services performed.

ACF Response: ACF concurs with this recommendation. In 2022, the GCS Policy, Oversight, and Administration (PO&A) Division successfully developed a training program aimed at addressing identified operational skill gaps within its acquisition function. Through this platform, GCS will deliver targeted recurring annual training to its workforce on the provisions of FAR 37.104, which outlines specific criteria for agencies to assess and avoid awarding personal service contracts. This training includes guidance on identifying warning indicators that may suggest contract requirements are personal in nature, obtaining written consent for the use of subcontractors and reviewing and approving invoices. Additionally, in 2024 year, ACF's Office of Refugee Resettlement (ORR) Division of Acquisition Requirements (DAR) began implementing a standard operating procedure for Contracting Officer Representatives (COR) file management, to include, standardized monitoring and surveillance processes thereby providing effective and consistent oversight of contractors.

Recommendation 3: ACF update its policies and procedures for receipt and oversight of deliverables and to incorporate Federal requirements related to the: (1) review, approval, and monitoring of invoices and (2) use of CLINs to properly account for and pay contractor expenditures.

ACF Response: ACF concurs with this recommendation. GCS is ensuring its internal policies reflect the CORs responsibility for reviewing and monitoring invoices to ensure receipt of deliverables, compliance with contract ceilings and CLINs. We will schedule additional policy updates for completion by the third quarter of FY2025.

Recommendation 4: ACF review potentially unallowable costs and obtain supporting documentation or take appropriate action to recoup from Deloitte any improperly paid amounts for the following:

- $2,022,468 for invoices that did not identify CLINs to track expenses,
- $1,363,283 in overtime charges,
- $1,226,649 of labor charges for invoices that did not include specific dates when each employee performed work,
- $244,174 in nonlabor costs that were not supported by receipts, and
- $112,945 of unsupported subcontractor charges.

ACF Response: ACF concurs with this recommendation. GCS, in partnership with ORR, will conduct a post-award recovery audit to thoroughly examine all relevant contractor records, supporting documentation, and other materials related to payments identified by HHS OIG as potentially unsupported or unallowable costs. If the audit determines that payments were either unsupported or ineligible, GCS will exercise all appropriate mechanisms to timely recover these costs. This review and the corresponding determinations are scheduled for completion by the third quarter of FY2025.

Recommendation 5: ACF review and correct potential Antideficiency Act violations by deobligating and obligating funds to appropriate CLINs used and report an Antideficiency Act violation if the violation cannot be corrected.

ACF Response: ACF concurs with this recommendation. GCS will conduct an internal review to determine if a potential Antideficiency Act violation exists by evaluating the proper CLIN structure for the contract. Should an Antideficiency Act violation exist, ACF will exercise the appropriate reporting measures require by law. This review will be completed by third quarter of FY2025.

Recommendation 6: ACF develop and implement policies and procedures:

- requiring contracts to include FAR clauses related to overtime requirements in contracts; and
- for tracking and verifying that all contractor staff (including subcontractors) assigned to work on a contract complete required trainings before performing any work under the contract (or within the allowed time).

ACF Response: ACF partially concurs with this recommendation. GCS will provide targeted acquisition training to its workforce to enforce compliance with FAR prescriptions for the inclusion of FAR clauses related to overtime requirements in contracts when deemed appropriate, particularly in labor-hour contracts.

Regarding the tracking and verification of contractor staff, we find it challenging to fully concur with this recommendation without deviating from the intent of the FAR pertaining to subcontractor oversight. The COR's role is to ensure the contractors meet the commitments of their contracts. Thus, we will ensure internal COR procedures reinforce the requirement for the CORs to ensure the verification and tracking of required trainings before commencing any work under the contract. However, it is critical to recognize that subcontractors, unlike prime contractors, do not work directly for the government, and operate under the management of the prime contractor. FAR 42.202 explicitly states that prime contractors bear the responsibility for managing their subcontractors. As such, prime contractors must not only exercise diligence in selecting qualified subcontractors but also demonstrate ongoing oversight of their performance and compliance with contractual requirements. This approach is essential to ensuring that prime contractors fulfill their obligations to the government effectively and remain in accordance with regulatory standards. Per GCS, it is not feasible for the COR or the CO to track subcontractor staff. The Government has privity of contract with the prime contractor and the management of performance of subcontractors falls on the prime. ACF CORs do not have an appropriate way to track this information. Failure to flow down these requirements to the subcontractor would affect the prime contractor's performance and should be documented and remedies can be enforced.

Thank you again for the opportunity to review this draft report. Please direct any follow-up inquiries to S. Benita Turner, Director, Enterprise Risk Management, Office of Administration, at (202) 401-9379.

Sincerely,

Meg Sullivan
Principal Deputy Assistant Secretary for the Administration for Children and Families, performing the delegable duties of the Assistant Secretary for Children and Families
Administration for Children and Families
U.S. Department of Health and Human Services

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