



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

May 26, 2011

TO: Francis S. Collins, M.D., Ph.D.
Director
National Institutes of Health

FROM: /Daniel R Levinson/
Inspector General

SUBJECT: Appropriations Funding for National Institutes of Health Office of Research
Facilities Development and Operations Contract HHSN292-2004-00002C With
Jacobs Facilities Inc. (A-03-10-03103)

The attached final report provides the results of our review of appropriations funding for National Institutes of Health Office of Research Facilities Development and Operations contract HHSN292-2004-00002C with Jacobs Facilities Inc.

Section 8L of the Inspector General Act, 5 U.S.C. App., requires that the Office of Inspector General (OIG) post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at <http://oig.hhs.gov>.

If you have any questions or comments about this report, please do not hesitate to call me, or your staff may contact Lori S. Pilcher, Assistant Inspector General for Grants, Internal Activities, and Information Technology Audits, at (202) 619-1175 or through email at Lori.Pilcher@oig.hhs.gov. Please refer to report number A-03-10-03103 in all correspondence.

Attachment

Department of Health & Human Services

**OFFICE OF
INSPECTOR GENERAL**

**APPROPRIATIONS FUNDING FOR
NATIONAL INSTITUTES OF HEALTH
OFFICE OF RESEARCH FACILITIES
DEVELOPMENT AND OPERATIONS
CONTRACT HHSN292-2004-00002C
WITH JACOBS FACILITIES INC.**



Daniel R. Levinson
Inspector General

May 2011
A-03-10-03103

Office of Inspector General

<http://oig.hhs.gov>

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Section 8L of the Inspector General Act, 5 U.S.C. App., requires that OIG post its publicly available reports on the OIG Web site.

OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

The designation of financial or management practices as questionable, a recommendation for the disallowance of costs incurred or claimed, and any other conclusions and recommendations in this report represent the findings and opinions of OAS. Authorized officials of the HHS operating divisions will make final determination on these matters.

INTRODUCTION

BACKGROUND

The Office of Research Facilities Development and Operations (ORF) is a component of the Office of the Director of the National Institutes of Health (NIH), an agency of the U.S. Department of Health & Human Services (HHS). The NIH Office of the Director sets policy and plans, manages, and coordinates NIH-wide programs and activities. Like all Federal agencies, ORF is required to comply with appropriations statutes when acquiring supplies and services with appropriated funds.

Federal Appropriations Statutes

An agency may obligate appropriations for goods and services when (1) the purpose of the obligation or expenditure is authorized, (2) the obligation occurs within the time limits for which the appropriation is available, and (3) the obligation and expenditure are within the amounts provided by Congress.

Federal statutes limit the purpose for which an agency may use appropriations to “the objects for which the appropriations were made except as otherwise provided by law” (31 U.S.C. § 1301(a)). A fiscal year appropriation may be obligated only to meet a legitimate, or bona fide, need arising in, or in some cases arising prior to but continuing to exist in, the appropriation’s period of availability (31 U.S.C. § 1502(a)). Unless otherwise specified in the appropriation, the period of availability for most funds is the fiscal year for which the appropriation was made.

Bona fide needs may involve transactions that cover more than 1 fiscal year, depending on the nature of the services involved: “The general rule is that the fiscal year appropriation current at the time the contract is made is chargeable with payments under the contract, although performance thereunder may extend into the ensuing fiscal year” (23 Comp. Gen. 370, 371 (1943)).¹ Multiyear contracting authority provided by statute is an exception to the bona fide needs rule.

The Comptroller General has held that “the question of whether to charge the appropriation current on the date the contract is made, or to charge funds current at the time the services are rendered, depends on whether the services are ‘severable’ or ‘entire’ [nonseverable].”² When services are continuing and recurring, they are severable, and the agency may fund the contract with fiscal year appropriations from the year in which services are provided, unless otherwise authorized by statute. When services are for a single outcome or effort, they are nonseverable and therefore chargeable to the fiscal year in which the contract was awarded, even though performance may extend into subsequent fiscal years.

Congress determines the amount of funding available to an agency by enacting appropriations to cover programs, projects, purchases, and services needed by the agency during the period for which the funds are made available. The Antideficiency Act prohibits an agency from obligating

¹ As cited in GAO-04-261SP, *Appropriations Law*, Vol. I, p. 5-24.

² As cited in GAO-04-261SP, *Appropriations Law*, Vol. I, p. 5-23.

or expending funds in advance of or in excess of an appropriation unless specifically authorized by law (31 U.S.C. § 1341(a)(1)). The Antideficiency Act requires agencies to report violations to the President and to Congress, with a copy to the Comptroller General (31 U.S.C. § 1351). Office of Management and Budget Circular A-11, *Preparation, Submission and Execution of the Budget*, part 4, § 145, prescribes the methodology for this reporting.

Office of Research and Facilities Contract Award

On December 04, 2003, ORF awarded contract HHSN292-2004-00002C (the Contract), totaling \$2.8 million, to Jacobs Facilities Inc. (Jacobs), in Arlington, Virginia. This 4-year Contract required Jacobs to provide quality management support services for the design and construction of the National Institute of Allergy and Infectious Diseases Integrated Research Facility at Fort Detrick in Frederick, Maryland. Subsequently, ORF issued 25 Contract modifications to add additional work that increased the Contract to \$59.6 million. ORF funded the Contract using no-year and annual appropriations for the predesign, design, bidding, and construction phases of the Contract and annual appropriations for the occupancy and postconstruction phases of the Contract.

Departmental Review of National Institutes of Health Contracts

In 2008, HHS management formed an internal review group of program, contract, and financial personnel called the “Tiger Team.” From November 2008 through February 2009, the Tiger Team assessed 176 HHS contracts, including 21 NIH contracts. The Contract was 1 of the 21 NIH contracts assessed. For 17 of the 21 contracts, the Tiger Team identified instances in which contract funding was not consistent with the current HHS Acquisition Regulation or appropriations law.³ The Tiger Team report did not identify its concerns or quantify funding errors by contract.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

Our objective was to determine whether ORF funded the Contract in compliance with the purpose, time, and amount requirements specified in appropriations statutes.

Scope

We reviewed selected obligations and payments made under the Contract during fiscal years 2004 through 2009. We did not review ORF’s internal controls because our objective did not require such a review.

We performed our fieldwork at ORF in Bethesda, Maryland.

³ *Funding Multiple Year Contracts; Tiger Team Summary Report*, July 29, 2009.

Methodology

To accomplish our objective, we:

- reviewed appropriations and acquisition laws and regulations and Contract requirements;
- reviewed the Tiger Team report;
- reviewed contract file documentation, including the statement of work, to determine the nature of the products or services to be provided; and
- analyzed selected funding documents and payment vouchers to determine what appropriations were obligated, recorded, and expended.

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 objective.

RESULTS OF AUDIT

ORF funded the Contract in compliance with the purpose, time, and amount requirements specified in appropriations statutes. ORF had a bona fide need for the services and appropriately funded the Contract with no-year appropriations and annual appropriations from fiscal years 2004 through 2009.