Department of Health and Human Services

OFFICE OF INSPECTOR GENERAL

THE FOOD AND DRUG ADMINISTRATION NEEDS TO IMPROVE ITS CONTRACT CLOSEOUT PROCESSES TO IDENTIFY CONTRACTS ELIGIBLE FOR CLOSEOUT AND CLOSE CONTRACTS TIMELY

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Office of Inspector General

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Report in Brief
Date: December 2021
Report No. A-03-20-03004

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL

The Food and Drug Administration Needs To Improve Its Contract Closeout Processes To Identify Contracts Eligible for Closeout and Close Contracts Timely

Why We Did This Audit

A 2017 Government Accountability Office report identified issues with contract closeout timeliness at several agencies, including HHS. Contract closeout is the final phase in a contract's life cycle and is a key step in ensuring that the contracting agency has received the appropriate goods and services at the agreed-upon price. This audit is part of a broad portfolio of OIG reviews examining various aspects of acquisition contracting throughout HHS.

Our objectives were to determine whether the Food and Drug Administration (FDA): (1) identified and reviewed contracts when they were eligible for closeout and (2) closed contracts in accordance with the Federal Acquisition Regulation (FAR), the HHS Acquisition Regulation (HHSAR), and other HHS acquisition policies and procedures.

How OIG Did This Audit

We reviewed: (1) 30 FDA contracts that had an ultimate completion date that was before November 2, 2015, (2) 10 open FDA contracts that were awarded by FDA and had a contract action between October 1, 2014, and June 30, 2020, and (3) 5 closed contracts that were awarded by FDA and had a contract action between October 1, 2014, through June 30, 2020.

What OIG Found

FDA did not always identify contracts eligible for closeout and did not always follow FAR requirements for closing contracts timely but otherwise generally closed contracts in accordance with the FAR, the HHSAR, and other HHS acquisition policies and procedures. FDA did not always identify and close contracts timely because FDA utilized manual processes for some contract closeout review functions when an automated process may have been more efficient. In addition, FDA personnel did not always communicate to each other information that would have helped identify contracts eligible for closeout, contracting officers and contracting officer's representatives (CORs) were not required to notify contract closeout specialists that a contract was complete, and the CORs' change requests were not always submitted before the CORs left their positions. Finally, FDA contract closeout specialists did not have the ability to run ad hoc query reports from the Purchase Request Information System, the system HHS uses to formulate, administer, and distribute contract documents.

Because contracts were not always closed timely, FDA may not have identified unused funds that could be deobligated and released to another appropriate need. Specifically, we found that two of the contracts that should have been closed had remaining funds of $88,152 that should have been deobligated and released to another appropriate need.

What OIG Recommends and FDA Comments

We recommend that FDA deobligate $88,152 in contract funding and close the six contracts that remain open but eligible for closeout. We also made several procedural recommendations for improving the contract closeout process. Our detailed recommendations are in the report.

In written comments on our draft report, FDA concurred with five of our recommendations and accepted the intent of the other recommendation. FDA described corrective actions that it had taken or planned to take in response to each of our recommendations. For example, FDA agreed to add language to the contract awards to require that contractors specify whether an invoice is the final contract invoice, plans to deobligate $88,152 in contract funding, and is seeking a solution to automate both the tracking of awards for closeout and the process of sending closeout documents to the contractor and COR.

The full report can be found at https://oig.hhs.gov/oas/reports/region3/32003004.asp.

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INTRODUCTION

WHY WE DID THIS AUDIT

A 2017 Government Accountability Office report identified issues with contract closeout timeliness at several agencies, including the Department of Health and Human Services (HHS).[1] Contract closeout is the final phase in a contract's life cycle and is a key step in ensuring that the contracting agency has received the appropriate goods and services at the agreed-upon price.[2] Contract closeout is triggered by the physical completion of a contract and is required by Federal regulations once the contracting officer receives evidence of complete receipt of property or services. A contract is closed once the contractor has completed contract requirements and the Government has completed all required administrative actions. The closeout process is generally the last chance for improper contract payments to be detected and recovered, and delayed closeout poses a financial risk to agency funds.

This audit is part of a broad portfolio of Office of Inspector General reviews examining various aspects of acquisition contracting throughout HHS.[3] HHS relies extensively on contractors to fulfill its mission. Since fiscal year (FY) 2014, the value of contract actions awarded by HHS has increased by 85 percent.[4] During the same time period, the value of contract actions awarded by the Food and Drug Administration (FDA) has increased by over 51 percent. With this significant increase in contract actions, it is imperative that FDA ensure that contracts that are eligible for closeout are identified and closed within required timeframes and that any excess funding on those contracts is deobligated.

OBJECTIVES

Our objectives were to determine whether FDA: (1) identified and reviewed contracts when they were eligible for closeout and (2) closed contracts in accordance with the Federal Acquisition Regulation (FAR), the HHS Acquisition Regulation (HHSAR), and other HHS acquisition policies and procedures.

[1] Government Accountability Office, *Federal Contracting: Additional Management Attention and Action Needed to Close Contracts and Reduce Audit Backlog* (GAO-17-738), issued Sep. 28, 2017.

[2] See Appendix D for definitions of key terms related to contract closeout used in this report.

[3] See Appendix B for related Office of Inspector General reports.

[4] A contract action is an oral or written action that results in the purchase, rent, or lease of supplies, equipment, services, or construction using appropriated dollars over a certain threshold. Modifications to these actions, regardless of dollar value, are also considered contract actions.

BACKGROUND

The Food and Drug Administration

Within HHS, FDA is responsible for protecting and advancing the public health by ensuring the safety, efficacy, and security of human and veterinary drugs, biological products, and medical devices; by ensuring the safety of our Nation's food supply, cosmetics, and products that emit radiation; and by helping to speed innovations that make medical products more effective, safer, and more affordable. FDA also regulates the manufacturing, marketing, and distribution of tobacco products to protect the public health and to reduce tobacco use by minors. FDA consists of 9 centers and 13 headquarters offices.

FDA awards contracts to help it conduct its mission. During FY 2020, HHS awarded contract actions valued at $41 billion, and of that, FDA awarded contract actions valued at $1.68 billion. From FY 2014 to FY 2020, the value of contract actions awarded by HHS increased over 85 percent. During the same time period, the value of contract actions awarded by FDA increased over 51 percent. See Figures 1 and 2.[5]

Figure 1: Value of HHS Contracting Actions During FYs 2014 Through 2020

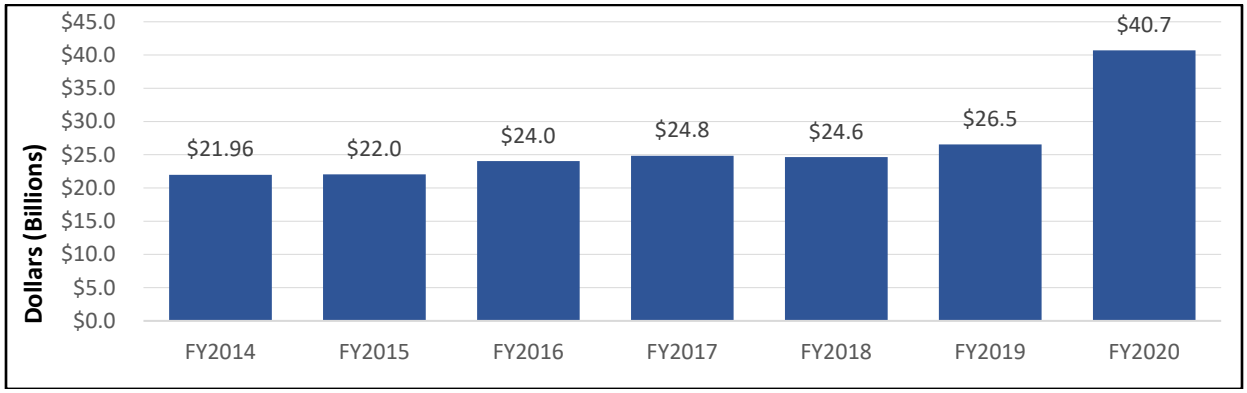
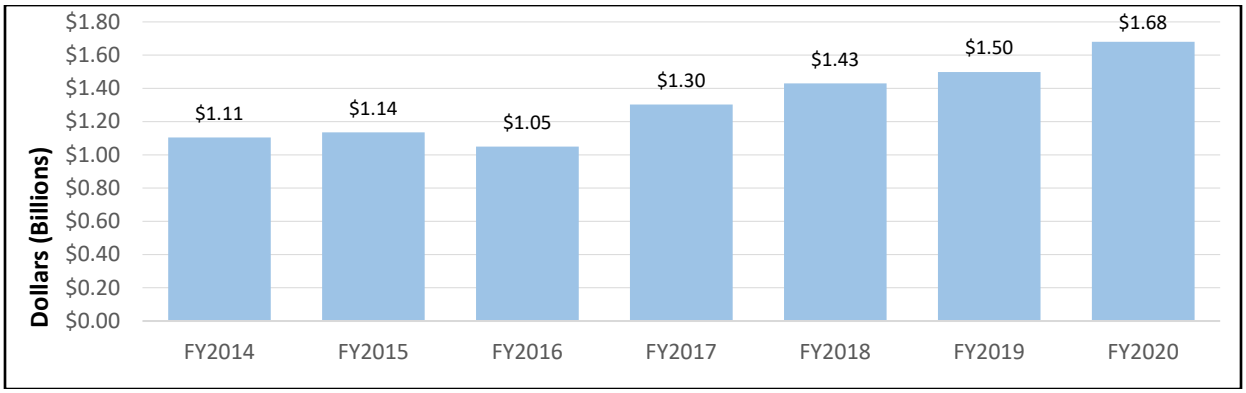


Figure 2: Value of FDA Contracting Actions During FYs 2014 Through 2020



[5] The Federal Procurement Data System (FPDS) is the source of the data used in these figures. All contracts with estimated values of $10,000 or more, and all modifications to those contracts, are reported to FPDS.

Federal Requirements for Contract Closeout

The United States Code includes laws related to obligation, deobligation, and expenditure of funds in contracting. Obligations represent Federal funds set aside to cover a legal commitment to pay, either immediately or in the future, for contractor goods and services. Expenditures represent the actual payment of funds to a contractor.

After fiscal year appropriations expire, they remain available to record, adjust, and liquidate obligations properly chargeable to the appropriation account for up to 5 years. However, they are not available for any new obligations that occur after the end of the expiring fiscal year. After 5 years, the appropriation account is closed and any remaining balance, whether obligated or not, is canceled (31 U.S.C. § 1552(a)).

The FAR is the primary regulation that all executive branch agencies must follow when acquiring goods and services with appropriated funds (FAR, 48 CFR chapter 1). The HHSAR provides supplemental guidance to the FAR and is tailored to meet HHS's specific internal requirements (HHSAR, 48 CFR chapter 3).[6] Both provide an interdependent framework for awarding contracts, paying contractor invoices, and conducting management and oversight of contractor performance.

The FAR provides the time standards for closing contracts based on the type of contract that is being administered. The standards are as follows:

- Contracts awarded using simplified acquisition procedures should be considered closed when the contracting officer receives evidence of receipt of property and final payment unless otherwise specified by agency regulations (48 CFR § 4.804-1).[7]

- Firm-fixed-price contracts, other than those using simplified acquisition procedures, should be closed within 6 months after the date on which the contracting officer receives evidence of physical completion.

- Contracts requiring settlement of indirect cost rates should be closed within 36 months of the month in which the contracting officer receives evidence of physical completion.

- All other contracts should be closed within 20 months of the month in which the contracting officer receives evidence of physical completion.

The FAR also provides the procedures for closing out contracts. These include procedures for receiving property, settling interim or disallowed costs, settling subcontracts, settling prior year

[6] The HHSAR is not required to, nor does it, provide additional guidance on every FAR requirement. HHS has the discretion to determine the aspects of the FAR about which it decides to provide additional guidance.

[7] Simplified acquisition procedures are Government procurement procedures that aim to reduce the administrative burden and time of awarding procurements below a certain dollar threshold. As of the date of the publication of this report, the dollar threshold is $250,000; however, before June 1, 2018, the dollar threshold was $150,000. The appropriate threshold is determined at the time of contract award.

indirect cost rates, submitting the contractor's final invoice, reviewing contract funds, and deobligating excess contract funds.

See Appendix C for Federal requirements related to contract closeout.

FDA's Contract Closeout Process

Office of Acquisition and Grants Services

Within FDA's Office of Operations, the Office of Acquisition and Grants Services (OAGS) is responsible for awarding contracts for FDA centers and offices. Within OAGS, the contract administration office is responsible for initiating closeout of contracts. Contract closeout procedures are performed by OAGS contracting officers and contract specialists, and they are supported by contracting officer's representatives (CORs) working in FDA centers and offices.

Contracting officers are individuals with the authority to enter into, administer, or terminate contracts and make related determinations and findings. The contracting officer is responsible for overseeing the entire closeout process and must verify that all required administrative actions have been satisfactorily completed. Under the immediate supervision and direction of the contracting officer, contract specialists assist with the technical and administrative requirements associated with awarding, administering, negotiating, terminating, and closing out contracts. They represent the contracting officer in the closeout process and assist in performing required closeout activities.

CORs are Federal employees designated in writing by a contracting officer to monitor and administer specified aspects of contractor performance after the award of a contract or order.

Acquisition Management Systems

Executive branch agencies are required to use the Federal Procurement Data System (FPDS) to maintain publicly available information about all unclassified contract actions exceeding a $10,000 threshold. Agencies must also report modifications to those actions, regardless of dollar value, if the modifications change the previously reported contract action report data.

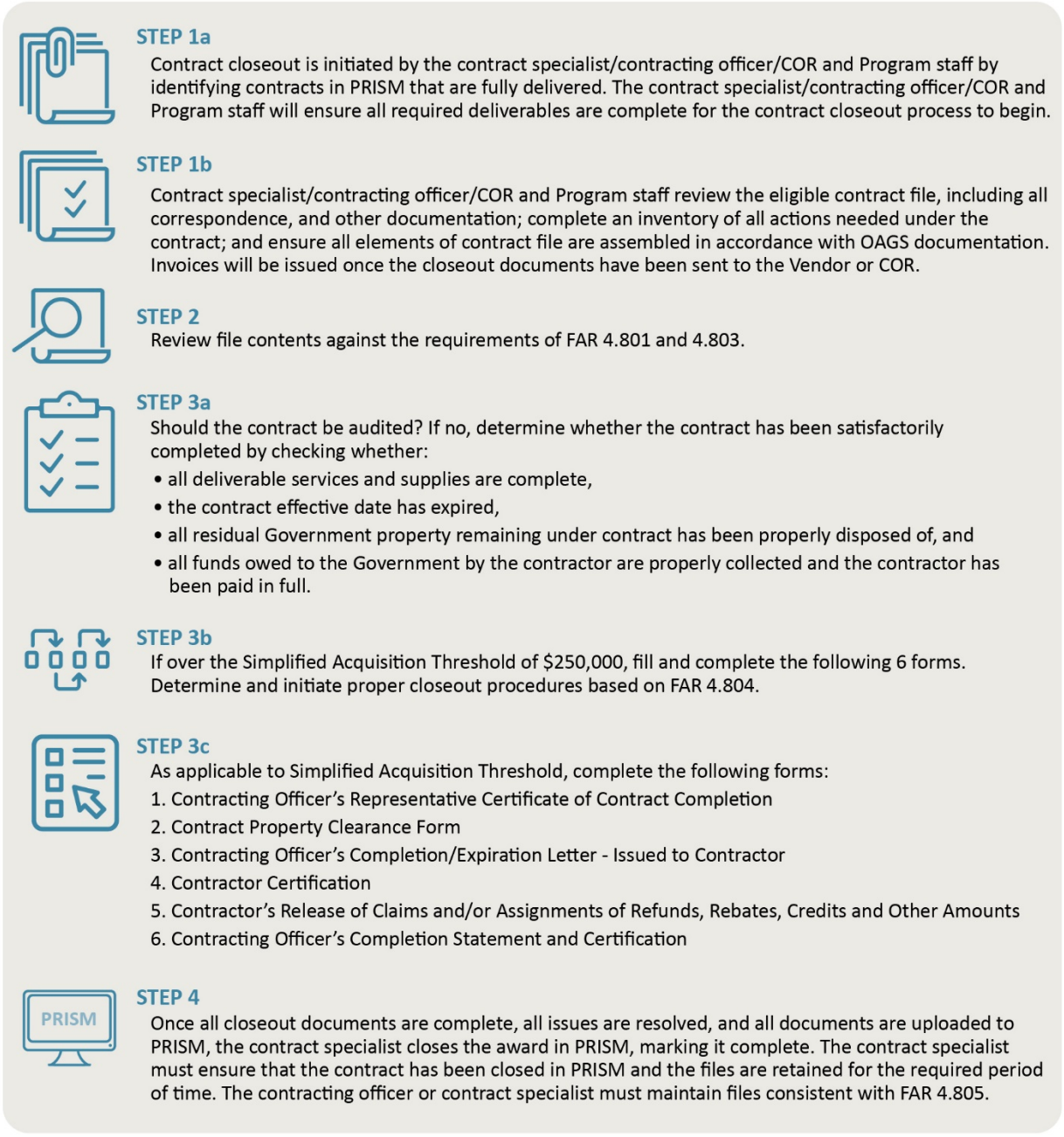
Until December 2019, FDA used the Departmental Contract Information System (DCIS) which transmitted FDA contract information to FPDS. DCIS was used to support the acquisition-related mission needs of HHS. HHS no longer actively uses DCIS to track new contract actions. However, FDA personnel can still use DCIS data as a resource in closing out contracts since it is still available and contains contract information from before January 2020.

HHS currently utilizes the acquisition processing and management functionality of the Purchase Request Information System (PRISM), a commercial off-the-shelf application which allows end users to formulate, administer, and distribute contract documents subject to the FAR. PRISM provides a single solution for integrating acquisitions with financial management.

Policies and Procedures for Contract Closeout

FDA's contract closeout process begins with identifying in PRISM a contract that has fully delivered orders and that may be eligible for closeout.[8] The contract closeout process is performed jointly by the contracting officer and contract specialist with assistance from the COR and includes the steps outlined in Figure 3.

Figure 3: Contract Closeout Process at FDA



[8] Fully delivered orders are orders for which the services have been completed or the purchase has been received.

HOW WE CONDUCTED THIS AUDIT

Our audit covered 45 contracts that were active during our audit period (October 1, 2014, through June 30, 2020). We sorted contracts by ultimate completion date to determine the number of FDA contracts that had an ultimate completion date that was before November 2, 2015, which would indicate that these contracts were eligible for closeout.[9] From those contracts, we selected 30 with ultimate completion dates that were before November 2, 2015, and asked FDA whether those contracts had since been identified for closeout and closed.

From that data we also selected and reviewed 10 open contracts that were awarded by FDA and had a contract action between October 1, 2014, and June 30, 2020. Additionally, we selected five closed contracts that were awarded by FDA and had a contract action between October 1, 2014, and June 30, 2020. We reviewed these 15 contracts to determine whether FDA identified contracts eligible for closeout, closed out eligible contracts within required timeframes, and followed FAR requirements and its own policies and procedures when it closed those contracts. All 15 contracts were firm fixed price,[10,11] and 5 were also executed using simplified acquisition procedures.[12]

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 contains the details of our audit scope and methodology.

FINDINGS

FDA did not always identify contracts eligible for closeout and did not always follow FAR requirements for closing contracts timely but otherwise generally closed contracts in accordance with the FAR, the HHSAR, and other HHS acquisition policies and procedures.

[9] FDA officials provided us with data they accessed on November 2, 2020. We selected contracts that had ultimate completion dates that were at least 60 months before the date the data were accessed. The ultimate completion date is the date that the contract performance is scheduled to be complete, and the maximum amount of time the FAR allows for a contract closeout for any type of contract is 36 months. Therefore, an ultimate completion date that was at least 60 months before the data were accessed is an indication that the contract was eligible for closeout.

[10] Under a firm-fixed-price contract, the contractor agrees to complete the contract for a set price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract.

[11] Of the 15 firm fixed price contracts, 1 was based on labor hours.

[12] Simplified acquisition procedures are Government procurement procedures that aim to reduce the administrative burden and time of awarding procurements below a certain dollar threshold.

Specifically, for the five closed contracts, FDA personnel prepared the required contract forms and closed the contracts in PRISM as required. However:

- of the 30 sampled contracts with ultimate completion dates between November 21, 2014, and October 31, 2015, 10 contracts were not closed as of June 15, 2021;

- of the 10 sampled contracts that were still open during our audit period, 8 contracts were open for at least 9 months after the final payment was made, which indicates that the contracts may have been eligible for contract closeout; and

- of the 5 sampled contracts that were closed between September 15, 2016, and May 24, 2021, 3 contracts were closed more than 12 months after the final payment was made.

FDA did not always identify and close contracts timely because FDA utilized manual processes for some contract closeout review functions when an automated process may have been more efficient. In addition, FDA personnel did not always communicate to each other information that would have helped identify contracts eligible for closeout and contracting officers and the COR were not required to notify contract closeout specialists that a contract was physically complete. Further, when the individuals acting as CORs for a contract changed, these change requests were not always submitted to the contracting officers before the CORs left their positions. Finally, FDA contract closeout specialists did not have the ability to run ad hoc query reports from PRISM.

Because contracts were not always closed timely, FDA may not have identified unused funds that could be deobligated and released to cover another appropriate need. Specifically, we found that two contracts that should have been closed had remaining funds of $88,152 that should have been deobligated and released to cover other appropriate needs.

FEDERAL REQUIREMENTS

The FAR 4.804-1 states that, "Files for contracts using simplified acquisition procedures should be considered closed when the contracting officer receives evidence of receipt of property and final payment, unless otherwise specified by agency regulations." In addition, files for firm-fixed-price contracts, other than those using simplified acquisition procedures, should be closed within 6 months after the date on which the contracting officer receives evidence of physical completion. Section 4.804-5 also states that, "The contract administration office is responsible for initiating (automated or manual) administrative closeout of the contract after receiving evidence of its physical completion. At the outset of this process, the contract administration office must review the contract funds status and notify the contracting office of any excess funds the contract administration office might deobligate."[13]

The FAR also provides time requirements for closing out contracts. Specifically, FAR 4.804-1 states that, "Files for contracts requiring settlement of indirect cost rates should be closed

[13] For FDA, both the contract administrative office and the contracting office are housed within OAGS.

within 36 months of the month in which the contracting officer receives evidence of physical completion," and "Files for all other contracts should be closed within 20 months of the month in which the contracting officer receives evidence of physical completion."

CONTRACTS ELIGIBLE FOR CLOSEOUT WERE NOT ALWAYS IDENTIFIED

Of the 30 selected contracts that had ultimate completion dates before November 2, 2015, 10 were still open as of June 15, 2021, and had not been identified as eligible for closeout.[14] See Table 1.

Table 1: FDA Contracts With Ultimate Completion Dates Before November 2, 2015, Still Open as of June 15, 2021

Contract No.	Ultimate Completion Date	Months Since Ultimate Completion Date*
1	12/31/2014	78
2	4/30/2015	74
3	8/10/2015	70
4	9/30/2015	69
5	10/30/2015	68
6	8/31/2015	70
7	10/31/2015	68
8	10/01/2015	69
9	10/03/2015	68
10	10/16/2015	68

* As of June 15, 2021.

CONTRACTS WERE NOT ALWAYS CLOSED TIMELY

Although FDA generally followed its policies and procedures for closing contracts, 8 of the 10 selected open contracts remained open for at least 9 months after the date the last invoice was paid. Further, of those eight, seven remained open over 48 months after the date the last invoice was paid. Of the eight contracts, two were closed during our audit and six remained open as of June 15, 2021.[15]

[14] On June 15, 2021, we received confirmation from FDA that the contracts were still open.

[15] The two contracts that were closed during our audit were both open at least 48 months after the date the last invoice was paid.

For the five selected contracts that were closed during our audit, FDA personnel prepared the required contract forms and closed the contracts in PRISM as required. However, of these five closed contracts, three were closed over 12 months after the final payment was made.

All 15 of the selected contracts were firm fixed price contracts that should have been closed within 6 months after the ultimate completion date. See Tables 2 and 3 on the following page.

Table 2: Open FDA Contracts Selected for Review

Contract No.	Funds to Deobligate	Date of Last Payment	Status as of 6/15/2021	Months Since Last Payment*
1	$1,242	6/14/2014	Open	84
2	0	2/3/2015	Open	76
3	0	3/19/2015	Closed*	75
4	0	8/27/2015	Closed*	70
5	0	2/17/2015	Open	76
6	0	6/11/2021	Open	0
7	0	6/9/2021	Open	0
8	86,910	9/3/2020	Open	9
9	0	4/7/2017	Open	51
10	0	1/18/2017	Open	53
Totals	$88,152			

*Closed on April 14, 2021.

Table 3: Closed FDA Contracts Selected for Review

Contract No.	Date of Last Payment	Date Closed	Months Between Last Payment and Contract Closeout
1	8/7/2018	5/24/2021	33
2	3/26/2020	12/20/2020	9
3	11/25/2015	9/15/2016	9
4	7/15/2019	5/24/2021	22
5	8/7/2018	5/22/2021	33

A LACK OF COMMUNICATION AND RELIANCE ON MANUAL PROCESSES CONTRIBUTED TO DELAYS IN IDENTIFYING AND CLOSING ELIGIBLE CONTRACTS

FDA did not always identify and close contracts eligible for closeout timely because it utilized manual processes for some contract closeout review functions when an automated process would have been more efficient. For example, FDA uses a manual process to track information that is outstanding and that the contract specialists performing closeout tasks need. FDA also uses a manual process to send closeout documents to the contractors and the CORs.

Automating both the tracking of information and the process for sending closeout documents to contractors and CORs may help facilitate timeliness of contract closeouts by allowing quick identification and followup about outstanding documentation still needed to close out the contract.

In addition, a lack of communication between the contract closeout parties delayed the identification and closeout of eligible contracts. Contractors, contracting officers, and CORs did not always communicate to contract specialists, who are largely responsible for completing closeout tasks, important information that would have helped them identify contracts eligible for closeout. Specifically, contract specialists indicated that contractors were not required to mark invoices as final, which prolonged determination of whether the contractor was fully paid for the contract. In addition, contracting officers and CORs did not always notify contract specialists that a contract was physically complete because they were not required to do so, and this hindered the identification of contracts eligible for closeout. Finally, when individuals acting as CORs for a contract changed, the CORs did not always communicate the change to the contracting officer before the CORs left their positions. This prolonged the closeout review because of the need to identify the current COR.

Although contract specialists were able to determine whether an invoice was a final payment and who the current COR was for the contract, this required additional work and delayed the contract closeout. In addition, FDA contract specialists did not have the ability to run ad hoc query reports from PRISM. Contract specialists could run standard PRISM reports; however, more specialized reports with PRISM fields such as 'Last Payment Date' relevant to closeout need to be requested through the Program Support Center.[16]

Because contracts were not always closed timely, FDA may not have identified unused funds that could be deobligated and released to another appropriate need. Specifically, we found that two contracts that should have been closed had remaining funds of $1,242 and $86,910 respectively that were potentially available for deobligation. The last payment for one of these contracts was made over 84 months prior to our audit, and the last payment for the other contract was over 9 months prior to our audit.

RECOMMENDATIONS

We recommend that the Food and Drug Administration:

- deobligate $88,152 in contract funding and close the six contracts that remained open but eligible for closeout as of June 15, 2021,

- automate both the tracking of awards assigned to contract closeout staff for closeout and the process of sending closeout documents to the contractor and COR,

[16] The Program Support Center is a multi-function shared service provider within HHS that provides financial management and procurement services to FDA.

- add language to the contract awards to require that contractors specify when an invoice is the final contract invoice,

- require contracting officers and CORs to notify contract closeout specialists in a timely manner when a contract is physically complete,

- require that CORs communicate a change in COR to the contracting officer before the COR leaves the position, and

- work with the Program Support Center to obtain from PRISM recurring reports used to facilitate contract closeout.

FDA COMMENTS

In written comments on our draft report, FDA concurred with five of our six recommendations and accepted the intent of the other recommendation. FDA described corrective actions that it had taken or planned to take in response to each of our recommendations. Specifically, with respect to our first four recommendations, FDA:

- agreed to deobligate $88,152 in contract funding and close the six contracts that remained open but eligible for closeout;

- stated that it is seeking a solution to automate both the tracking of awards assigned to contract closeout staff for closeout and the process of sending closeout documents to the contractor and COR;

- agreed to add language to the contract awards to require that contractors specify whether an invoice is the final contract invoice and stated that it will be updating its invoicing instructions; and

- explained that its current contract closeout policies require contracting officers and CORs to notify contract closeout specialists in a timely manner when a contract is physically complete and stated that it will develop a financial report which, when complete, will streamline the identification of potential actions for closeout.

FDA also concurred with our fifth recommendation that it require CORs to communicate a change in COR to the contracting officer before the COR leaves the position. However, FDA pointed out that CORs are generally located outside of the OAGS supervisory chain and within the various Offices and Centers throughout FDA. According to FDA, while OAGS can strongly encourage program offices to comply, ultimately it is up to the Centers to manage their staff, including staff identified as CORs, and to ensure that CORs are replaced as they leave their positions.

Finally, in response to our sixth recommendation, FDA stated that it accepted the intent of our recommendation that better reporting is necessary to track and plan contract actions that are

ready for closeout. Further, FDA stated that it will discontinue the fee to the Program Support Center for PRISM reporting beginning January 1, 2022, because of the upcoming launch of additional HHS reporting programs and programs related to PRISM. FDA stated that it will use these programs to improve closeout reporting and planning.

FDA's comments are included in their entirety as Appendix E.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Our audit covered 45 contracts that were active during our audit period (October 1, 2014, through June 30, 2020). We sorted contracts by ultimate completion date to determine the number of FDA contracts that had an ultimate completion date that was before November 2, 2015. From those contracts, we selected 30 with ultimate completion dates that were before November 2, 2015, and asked FDA whether those contracts had since been identified for closeout and closed.

We also selected and reviewed 10 open contracts that were awarded by FDA and had a contract action between October 1, 2014, and June 30, 2020. Additionally, we selected five contracts closed during our audit period that were awarded by FDA and had a contract action between October 1, 2014, and June 30, 2020. We reviewed these 15 contracts to determine whether FDA identified contracts eligible for closeout, closed out eligible contracts within required timeframes, and followed FAR requirements and its own policies and procedures when it closed those contracts. All 15 contracts were firm fixed price, and 5 were also executed using simplified acquisition procedures.

We limited our audit of FDA's internal controls to those applicable to our objectives. Specifically, we assessed the design, implementation, and operational effectiveness of FDA's organizational structure and the control activities detailed in FDA's policies and procedures related to contract closeout. These control activities included identification of contracts eligible for closeout, analysis of documentation to determine whether the contract should be closed, and completion of the tasks required to close the contract.

We performed our audit from August 2020 through July 2021.

METHODOLOGY

To accomplish our objective, we:

- reviewed applicable Federal regulations and guidance;
- reviewed FDA's contract closeout policies and procedures;
- reviewed FDA's contract documents, including but not limited to contract awards, modifications, receipts, and payments;
- reviewed PRISM, DCIS, and FPDS contract information data;
- interviewed FDA officials responsible for contract closeout to gain an understanding of the closeout process;

- interviewed Program Support Center officials responsible for PRISM to gain an understanding of the reporting system;

- documented and evaluated FDA's process for closing contracts;

- selected and reviewed judgmental samples of 10 open contracts, 5 contracts that were closed between September 2016 and May 2021, and 30 contracts with ultimate completion dates between November 21, 2014, and October 31, 2015;

- sorted DCIS contract data provided by FDA to identify contracts with an ultimate completion date that was before November 2, 2015;

- determined whether there were any excess funds remaining in the contract for deobligation; and

- discussed our findings with FDA 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: RELATED OFFICE OF INSPECTOR GENERAL REPORTS

Report Title	Report Number	Date Issued
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	12/18/2020
CMS Did Not Administer and Manage Strategic Communications Services Contracts in Accordance With Federal Requirements	A-12-19-20003	07/15/2020
The Centers for Medicare & Medicaid Services Did Not Identify and Report Potential Antideficiency Act Violations for 12 Contracts Used To Establish the Federal Marketplace Under the Affordable Care Act	A-03-16-03001	02/28/2020

APPENDIX C: FEDERAL REQUIREMENTS

United States Code

31 U.S.C. § 1553(a), Availability of appropriation accounts to pay obligations

This section states that, after the end of the period of availability for obligation of a fixed appropriation account and before the closing of that account under 31 U.S.C. section 1552(a), the account must retain its fiscal year identity and remain available for recording, adjusting, and liquidating obligations properly chargeable to that account.

FEDERAL ACQUISITION REGULATION

48 CFR § 4.803, Contents of contract files

This section provides examples of the records normally contained, if applicable, in contract files.

48 CFR § 4.804-1, Time standards for closeout of contract files

The FAR (48 CFR § 4.804-1) provides that the time standards for closing contract files are based on the type of contract administered. The time standards for closing out contracts are:

- Files for contracts using simplified acquisition procedures should be considered closed when the contracting officer receives evidence of receipt of property and final payment unless otherwise specified by agency regulations.

- Files for firm-fixed-price contracts, other than those using simplified acquisition procedures, should be closed within 6 months after the date on which the contracting officer receives evidence of physical completion.

- Files for contracts requiring settlement of indirect cost rates should be closed within 36 months of the month in which the contracting officer receives evidence of physical completion.

- Files for all other contracts should be closed within 20 months of the month in which the contracting officer receives evidence of physical completion.

48 CFR § 4.804-5, Procedures for closing out contract files

This section includes procedures for receiving property, settling interim or disallowed costs, settling subcontracts, settling prior year indirect cost rates, submitting the contractor's final invoice, reviewing contract funds, and deobligating excess funds.

48 CFR § 4.805, Storage, handling, and contract files

This section states that agencies must prescribe procedures for the handling, storing, and disposing of contract files in accordance with the National Archives and Records Administration General Records Schedule 1.1, Financial Management and Reporting Records.

This section further states that these procedures must take into account all types of media used for documentation. Agencies may change the original medium to facilitate storage. The process used to create and store records must record and reproduce the original document completely, accurately, and clearly. Data transfer, storage, and retrieval procedures must protect the original data from alteration. Unless law or other regulations require signed originals to be kept, they may be destroyed after the responsible agency official verifies that record copies on alternate media and copies reproduced from the record copy are accurate, complete, and clear representations of the originals.

APPENDIX D: GLOSSARY OF KEY CONTRACT TERMS USED IN THIS REPORT[17]

Acquisition. The act of obtaining supplies or services (including construction) by and for the use of the Federal Government through a contract and using appropriated funds. These supplies or services are obtained through purchase or lease and may already exist or may need to be created, developed, demonstrated, and evaluated.

Appropriation. The budget authority from the United States Treasury to incur obligations and make payments from the Treasury for specified purposes.

Contract. A mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them.

Contract action. Any oral or written action that results in the purchase, rent, or lease of supplies or equipment, services, or construction using appropriated dollars over the micro-purchase threshold, or modifications to these actions regardless of dollar value.

Contract administration office. An office that performs: (1) assigned post-award functions related to the administration of contracts; and (2) assigned pre-award functions.

Contract File. A collection of all documentation and records related to a contract.

Contracting officer. A person with the authority to enter in to, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer.

Contracting Officer's Representative. A Federal employee designated in writing by a contracting officer to act as the contracting officer's representative in monitoring and administering specified aspects of contractor performance after award of a contract or order.

Contract modification. Any written change in the terms of a contract.

Contract specialist. An individual who performs a range of contracting functions including awarding, administering, negotiating, terminating and closing out various types of contracts. A contract specialist represents the contracting officer in the closeout process and is responsible for assisting with completing much of the closeout activity required to be performed.

Deobligation. An agency's cancelation or downward adjustment of a previously incurred obligation.

[17] Definitions compiled from various sources including the FAR and the Federal Acquisition Institute.

Invoice. A contractor's bill or written request for payment under the contract for supplies delivered or services performed.

Obligation. A definite commitment that creates a legal liability of the Government for the payment of goods and services ordered or received or a legal duty on the part of the United States that could mature into a legal liability by virtue of the actions on the part of the other party beyond the control of the United States. An agency incurs an obligation when it places an order, signs a contract, awards a grant, purchases a service, or takes another action that requires the Government to make payments to the public, or from one Government account to another.

Physically complete. A contract is considered to be physically completed when either the contractor has completed the required deliveries and the Government has inspected and accepted the supplies; the contractor has performed all services and the Government has accepted these services; all option provisions, if any, have expired; the Government has given the contractor a notice of complete contract termination; or the contract period has expired.

APPENDIX E: FDA COMMENTS

DATE: November 17, 2021

TO: Amy J. Frontz, Deputy Inspector General for Audit Services

FROM: Lisa Rovin, Director, Public Health Strategy and Analysis Staff
FDA Office of Economics and Analysis Lisa B. Rovin -S Digitally signed by Lisa B. Rovin -S Date: 2021.11.18 11:30:01 -05'00'

SUBJECT: Draft Report, A-03-20-03004

Attached are the Food and Drug Administration's general and technical comments to the Office of Inspector General's January 10, 2020 draft report entitled *The Food and Drug Administration Needs To Improve Its Contract Closeout Processes To Identify Contracts Eligible for Closeout and Close Contracts Timely*, A-03-20-03004. Thank you for the opportunity to provide feedback.

Attachments

U.S. Food and Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20993
www.fda.gov

FDA's General Comments

OIG Draft Report: The Food and Drug Administration Needs To Improve Its Contract Closeout Processes To Identify Contracts Eligible for Closeout and Close Contracts Timely, A-03-20-03004

FDA appreciates the opportunity to review and comment on OIG's draft report.

OIG recommends that FDA deobligate $88,152 in contract funding and close the six contracts that remained open but eligible for closeout as of June 15, 2021.

FDA concurs with this recommendation.

OIG recommends that FDA automate both the tracking of awards assigned to contract closeout staff for closeout and the process of sending closeout documents to the contractor and COR.

FDA concurs with this recommendation. OAGS is actively seeking and working on a solution.

OIG recommends that FDA add language to the contract awards to require that contractors specify when an invoice is the final contract invoice.

FDA concurs with this recommendation. OAGS will update its Invoicing Instructions.

OIG recommends that FDA require contracting officers and CORs to notify contract closeout specialists in a timely manner when a contract is physically complete.

Program offices / CORs are directed to initiate a closeout by submitting $0 requisition to OAGS if the remaining balance on the contract is over $500, or to send an email to a centralized OAGS email box when the balance is $500 or less. All requisitions / emails are sent to a centralized location for assignment. This reflects the existing close-out policy and a part of the quarterly Undelivered Order review. OAGS will develop a financial report for this purpose which, when complete, will streamline the identification of potential actions for close-out.

OIG recommends that FDA require that CORs communicate a change in COR to the contracting officer before the COR leaves the position.

FDA concurs with this recommendation. CORs are generally located outside of the OAGS supervisory chain and within the various offices and centers throughout FDA. While OAGS can strongly encourage program offices to comply, ultimately it is up to the Centers to manage their staff (to include those identified as CORs) and to ensure that CORs are replaced as they leave their positions.

OIG recommends that FDA work with the Program Support Center to obtain from PRISM recurring reports used to facilitate contract closeout.

FDA accepts the intent of the recommendation that better reporting in necessary to track and plan contract actions that are ready for Close Out. However, FDA will not be continuing the fee to PSC for PRISM reporting beginning January 1, 2022 with the forthcoming launch of their Acquisition Lifecycle Platform (ALP) replacing the PSC WorkSmarter platform. HHS/ASFR/Office of Acquisition (OA) intends to build a PRISM data lake starting August 2022 for all the HCAS OpDivs and StaffDivs to utilize for PRISM data reporting. The combination of ALP, the Data Lake, and FBIS Financial Reporting from UFMS will be utilized to improve Closeout reporting and planning.