

U.S. DEPARTMENT OF COMMERCE
Office of Inspector General



Census Bureau

***Contract Modifications and
Award-Fee Actions
on the Decennial Response
Integration System
Demonstrate Need for
Improved Contracting Practices***

Final Report No. OIG-11-020-A

February 15, 2011

Office of Audit and Evaluation





UNITED STATES DEPARTMENT OF COMMERCE
Office of Inspector General
Washington, D.C. 20230

February 15, 2011

MEMORANDUM FOR: Dr. Robert Groves
Director, U.S. Census Bureau

FROM: Anne C. Eilers 
Principal Assistant Inspector General for Audit and Evaluation

SUBJECT: *Contract Modifications and Award-Fee Actions on the Decennial Response Integration System Demonstrate Need for Improved Contracting Practices*
Final Report No. OIG-11-020-A

This memorandum transmits our final report on the Decennial Response Integration System (DRIS) contract modification and award-fee practices.

In October 2005, the Census Bureau awarded a \$483 million cost-plus-award-fee contract to Lockheed Martin Corporation to develop and implement DRIS, an information system that would assist in 2010 Census data collection and analysis. Two years later, Census awarded a contract modification, at a value of about \$264.6 million, to Lockheed Martin. The modification was primarily for increasing outbound telephone coverage follow-up (in which households were contacted by telephone to verify the information provided in mailed-back Census forms). The purpose of our audit was to determine whether the bureau's contracting officer appropriately awarded this modification and used the appropriate contract type for the initial DRIS contract award.

In brief, we found that the bureau did not have adequate pre-award practices in place to ensure that the modification was properly awarded, that the bureau committed to this contract type without sufficiently justifying its use as required by the Federal Acquisition Regulation, and that it used an award-fee payment structure that provided little incentive for the contractor to achieve specific performance objectives. We recommended actions the bureau should take to address these deficiencies.

Census's January 26, 2011, response to our draft report provides detailed comments on our findings. The response concurs with, and commits to addressing, our recommendations. We have summarized the response in our final audit report and have included it in its entirety as appendix B. We note that Census has already begun to improve its award-fee practices.

In accordance with Department Administrative Order 213-5, please provide us with an audit action plan within 60 days of the date of this memorandum. We extend our appreciation to Census and the DRIS contractor's staff for the courtesies shown us during our fieldwork. If you have any questions, please contact me at (202) 482-2754 or Mark Zabarsky at (202) 482-3884.

cc: Michael Palensky, Chief Acquisition Division, Census
Pamela White, External Liaison Branch Chief, Census
Adam Miller, Audit Liaison, Management Services Branch

Attachment



Report In Brief

U.S. Department of Commerce Office of Inspector General

February 15, 2011



Background

In October 2005, the Census Bureau awarded a \$483 million cost-plus-award-fee contract to Lockheed Martin Corporation to develop and implement DRIS, an information system that would assist in 2010 Census data collection and analysis.

The contract has a 6-year performance period, which includes designing and developing the system, conducting the census dress rehearsal that occurred in 2008, conducting 2010 census operations, and archiving data and disposing of equipment after the census is completed. These final activities are scheduled for completion in September 2011.

Why We Did This Review

In September 2007, Census awarded Lockheed Martin an approximately \$264.6 million modification to the DRIS contract. Most of the cost for the modification was for increasing outbound telephone coverage follow-up (in which households were contacted by telephone to verify the information provided in mailed-back Census forms).

As part of our oversight of the 2010 census, the Office of Inspector General (OIG) performed an audit to determine whether Census's contracting officer appropriately awarded the contract modification number and used the appropriate contract type for the initial DRIS award.

Census Bureau

2010 Census: Contract Modifications and Award-Fee Actions on the Decennial Response Integration System (DRIS) Demonstrate Need for Improved Contracting Practices (OIG-11-020-A)

What We Found

The Census Bureau did not have adequate contract pre-award practices in place to ensure that a modification to the DRIS contract (modification number 21, in the amount of \$264.6 million) was properly awarded. Specifically, Census did not

- perform the required review for legal sufficiency before issuing the solicitation;
- retain essential documentation as part of the contract file to support the contracting officer's price reasonableness decision; and
- have the acquisition plan—which reflected significant changes resulting from modification number 21 that affected the DRIS program—approved by the Department of Commerce's Senior Procurement Executive before issuing the solicitation.

The lack of well-defined pre-award processes may have resulted in the bureau's inability to promote and provide for full and open competition and ensure a fair and reasonable price in awarding this modification.

We also found that the bureau's justification for the contract type and payment structure it chose for DRIS did not conform to federal guidance:

- Census did not adequately justify the contract type for the initial award; and
- the contract's payment structure could have allowed the contractor to receive substantial payments for less-than-satisfactory performance, leaving little in the award-fee pool to encourage the contractor to meet or exceed desired outcomes.

What We Recommended

We recommend that the Census Bureau's Chief, Acquisition Division

1. develop and implement internal controls to ensure that, going forward, pre-award policies and processes are adhered to;
2. direct the DRIS contracting officer to obtain the proper reviews, support, and approval before issuing contract solicitations;
3. ensure determination and findings on future contracts contain supporting details;
4. conduct and document a cost-benefit analysis when deciding whether to use this contract type in the future; and
5. require the contracting officer to revise the award-fee payment structures of the final phase of the DRIS contract to provide incentives for excellent contractor performance, and prohibit the contractor from receiving award fees for less-than-satisfactory performance.

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Introduction

In October 2005, the Census Bureau awarded a \$483 million cost-plus-award-fee contract to Lockheed Martin Corporation to develop and implement the Decennial Response Integration System (DRIS), an information system that would assist in 2010 Census data collection and analysis. The contract has a 6-year performance period, which includes designing and developing the system, conducting the census dress rehearsal that occurred in 2008, conducting 2010 Census operations, and archiving data and disposing of equipment after the census is completed. Census divided DRIS contract performance into three phases, as shown below in table 1.

Table 1. DRIS Contract Performance Phases

Phase	Start Date	End Date	Tasks
Phase I	October 2005	September 2008	Design, develop, implement, and support the 2008 census rehearsal
Phase II	September 2007	December 2010	Open data center sites, complete operational testing, conduct 2010 decennial operations, and close down DRIS 2010 operations facilities once the census is complete
Phase III	October 2010	September 2011	Archive DRIS data and images in accordance with National Archives and Records Administration guidelines and dispose of DRIS equipment once it is no longer needed

Source: DRIS Contract No YA1323-05-CN-0029.

In September 2007, Census awarded contract modification number 21, at a value of about \$264.6 million, to Lockheed Martin. Most of the cost for the modification—\$[REDACTED] million—was for increasing the scope of the bureau’s outbound telephone coverage follow-up operation (in which households were contacted by telephone to verify the information provided in mailed-back Census forms) from 2.6 million to 6.81 million cases. The remaining \$[REDACTED] million was for the re-instatement of development and planning tasks that had been removed as a result of an earlier contract re-planning effort, and the increase of the available award-fee pool.

The objectives of our audit were to determine whether the contracting officer appropriately awarded contract modification number 21 and used the appropriate contract type for the initial DRIS contract award. Appendix A outlines the scope and methodology we used in this audit.

We found that the bureau did not have adequate contract pre-award practices in place to ensure that modification number 21 was properly awarded. Specifically, Census did not

- perform the required review for legal sufficiency before issuing the solicitation;
- retain essential documentation as part of the contract file to support the contracting officers' price reasonableness decision; and
- have the acquisition plan—which reflected significant changes resulting from modification number 21 that affected the DRIS program—approved by the Department of Commerce's Senior Procurement Executive before issuing the solicitation.

The lack of well-defined pre-award processes could have resulted in an inability for the bureau to promote and provide for full and open competition and ensure a fair and reasonable price in awarding this modification.

Our audit highlights some ways Census can improve its contracting practices. Sound procurement practices should be in place to ensure federal funds are appropriately spent and that Census maintains integrity in its day-to-day procurement operations. The internal control weaknesses in the DRIS contract occurred because acquisition and contracting officials did not adhere to federal and Commerce acquisition regulations and policies, leaving Census without assurance that the contract modification price was fair and reasonable, competition was maximized, or that the government's interests were protected.

Furthermore, it is unknown whether the bureau's use of an award-fee contract type for the initial DRIS contract was appropriate. This is largely because Census committed to this contract without sufficiently justifying its use as required by the Federal Acquisition Regulation. Award-fee contracts can motivate contractor performance when certain performance standards are applied. Census's award-fee practice of offering contractors opportunities to earn large fees for less-than-satisfactory performance establishes a culture in which the bureau expects to pay—and contractors expect to receive—most of the available award fee regardless of outcome. These practices provide little incentive for contractors to meet minimum contract requirements, much less exceed them, and could compromise the integrity of the fee process.

Until Census improves the internal controls on its acquisition function and ensures contracting officials effectively design and implement contracts, it will continue to risk wasting taxpayer dollars by using poor contracting practices and potentially paying sizable awards for subpar contractor performance.

Findings and Recommendations

I. DRIS Contract Modification's Pre-Award Process Needed Improvement

The Census Bureau has internal control weaknesses associated with executing key pre-award processes for awarding contract modification number 21. For instance, Census did not ensure that the modification was reviewed for legal sufficiency before the solicitation was issued, leaving the bureau at risk for disputes. Further, contract files do not include documentation that price and/or cost analyses were performed for determining fair and reasonable price. Also, Census did not have the acquisition plan approved by the Department of Commerce's Senior Procurement Executive until over 5 months after issuing the solicitation¹—failing to ensure that this major program change had the appropriate level of oversight.

Acquisition and contracting officials stated that these control weaknesses occurred because the officials found the pre-award process confusing. Therefore, they did not adhere to federal and Commerce acquisition regulations and policies. The lack of well-defined pre-award processes may have resulted in the bureau's inability to promote and provide for full and open competition and ensure a fair and reasonable price in awarding this modification.

A. A Review for Legal Sufficiency Was Not Performed

Legal reviews are conducted to determine if the procurement package is legally sufficient—meets all legal requirements—and ensure that the government's interests are protected. The *Commerce Acquisition Manual* requires all modifications expected to exceed \$100,000 be reviewed for legal sufficiency. Also, Department Administrative Order 208-5 states that all noncompetitive awards involving \$50,000 or more, including modifications to existing contracts involving the procurement of new or additional requirements, shall be subject to legal review by the Assistant General Counsel for Administration, or designee, prior to execution.²

We found that the contracting officer did not obtain the required review for legal sufficiency before issuing the solicitation, leaving Census vulnerable to protests.³ Instead, the acquisition office—through its own interpretation—determined that the modification was within the scope of the contract and did not require a legal review. However, the acquisition office could not provide documentation demonstrating that the modification was within scope and did not need to be re-competed. Our review indicates that the contracting officer may have issued the contract modification for work that was outside the scope of the original DRIS contract. Specifically, the modification represents a significant change in the amount of work and overall cost of the contract. The increase from 2.6 to 6.81 million outbound telephone coverage follow-up cases is an increase of 150 percent, and the additional \$[REDACTED] million attributed to these additional services is over [REDACTED] percent of the original contract price. Therefore, absent a legal review finding the

¹ The solicitation was issued on March 1, 2007.

² "Contracting (Procurement) Review and Approval Requirements," dated September 10, 1984. Note that the Assistant General Counsel for Finance and Litigation, through the Contract Law Division, now performs these reviews. Procurement memorandum 2010-04, dated January 15, 2010, amends Department Administrative Order 208-5, raising the threshold for all noncompetitive awards to \$100,000 or more.

³ A *protest* is a written objection by an interested party to an award or proposed award of a contract.

modification within scope, the potentially out-of-scope work should have been awarded using competitive procedures or supported with a justification and approval⁴ for other than full and open competition, in accordance with legal requirements.

Contract actions, such as modifications, are deemed by law to satisfy competition requirements if they are within the scope, period of performance, and maximum value of a properly awarded underlying contract. However, decisions concerning the scope of a contract involve subjective analysis and judgment. In making this determination, the contracting officer must decide whether the new work is encompassed by the existing contract's statement of work and the original competition for that contract. Guiding principles for scope of contract determinations are established in case law, such as bid protest decisions of the Comptroller General. These decisions establish that the key factor is whether there is a material difference between the new work and the contract that was originally awarded. Under the Competition in Contracting Act of 1984,⁵ modifications of awarded contracts are exempted from the competitive process unless the change is beyond the scope of the original contract. In this case, a legal review might have revealed that the modification was out of scope due to the significant changes to the work and cost called for by the original contract, in which case the contracting officer did not properly compete the additional requirements and possibly did not receive a fair and reasonable price.

B. Modification Awarded Without Documenting Price Reasonableness

The Federal Acquisition Regulation⁶ requires that contracting officials determine price reasonableness before awarding a contract, and that documentation supporting these determinations is in the contract file. The Federal Acquisition Regulation⁷ provides examples of the records normally kept in the contract files, such as the contractor's proposal, cost or price analysis, and audit reports. Also, the *Commerce Acquisition Manual*⁸ requires that the decision that a price is fair and reasonable must be based upon some form of analysis, either price analysis or a combination of price and cost analysis.

The contracting officer did not comply with the Federal Acquisition Regulation when documenting fair and reasonable price determinations. The contracting officer stated in the price negotiation memorandum that the contractor's proposed price of \$264.6 million for the modification was well supported and reasonable based on the cost negotiation team's detailed review of all aspects of the contractor's cost proposal, including evaluating various rates such as indirect, direct, and general and administrative. The contracting officer awarded the modification, valued at the contractor's proposed price; however, the contracting officer did not retain documentation in the contract file, such as a price and/or cost analysis, to support the determination. Without such documentation, there is no assurance that the decision was appropriate.

⁴ A justification and approval is a written authorization, from the appropriate level, to proceed with a contract without obtaining full and open competition.

⁵ Pub. L. No. 98-369.

⁶ Subpart 15.4, "Contract Pricing."

⁷ Subpart 4.803, "Contents of Contract Files."

⁸ Part 15.

C. Revised Acquisition Plan Was Not Approved Timely by Procurement Executive

The first, and maybe the best, opportunity to reduce risk in any acquisition is in the planning phase, when critical decisions are made that have significant implications for the acquisition's overall success. Achieving the right knowledge at the right time enables leadership to make informed decisions about when and how best to move into succeeding phases. The acquisition plan provides the framework for planning, directing, contracting for, and managing a program.

The *Commerce Acquisition Manual*⁹ requires that significant changes in the acquisition plan be approved by the Department of Commerce's Senior Procurement Executive before they are implemented—meaning before issuing the solicitation. The manual also states that the requirement for approving an acquisition plan may be waived by the Senior Procurement Executive on the basis of urgency or for some other justifiable reason; however, the request for waiver must be in writing and submitted for approval prior to the release of the solicitation.

Census did not have the acquisition plan approved by the Senior Procurement Executive or request a waiver for doing so before issuing the solicitation. Although the plan was approved by the Senior Procurement Executive in August 2007, it was over 5 months after the solicitation was issued. As a result, there was no assurance that Census employed sound investment methodologies.

Recommendations

We recommend that the Census Bureau's Chief, Acquisition Division

1. develop and implement internal controls to ensure that, going forward, pre-award policies and processes for the deficiencies identified in this audit report are adhered to; and
2. direct the DRIS contracting officer to
 - a. obtain reviews for legal sufficiency to ensure that any future modifications under the DRIS contract are within the scope of that contract,
 - b. retain as part of the contract file the supporting documentation used to make the price reasonableness determinations, and
 - c. have all acquisition plans with significant revisions that would affect the DRIS program be approved by the Senior Procurement Executive before issuing the solicitation.

II. Census Bureau's Practices for Justifying an Award-Fee Contract and Establishing the Payment Structure Are Not Consistent with Federal Acquisition Guidance

Cost-reimbursable contracts involve high risk for the federal government because of the potential for cost escalation and because the government pays a contractor's costs of performance regardless of whether the work is completed. Award-fee contracts, a type of cost-reimbursable contract, are used throughout the government to encourage contractors to perform efficiently and

⁹ Subpart 7.1.

effectively, and to motivate excellent contractor performance. Award-fee contracts are appropriate when contracting and program officials cannot establish in advance cost, schedule, or technical performance objectives. Under current regulations, contracting officers are required to prepare a determination and findings document to justify a cost-reimbursement contract (as is the case for using award-fee contracts), and are generally required to include in the contract file documentation showing why a particular contract type was selected. In this case, Census chose to prepare a determination and findings document to meet this requirement.

We found that the contracting officer did not properly complete the determination and finding justifying the selection of an award-fee contract type for the initial DRIS contract. While an award-fee contract may have been appropriate, for the most part the documentation used boilerplate language and did not sufficiently show why this type of contract was selected. For instance, the contracting officer should be able to demonstrate whether an award-fee contract's benefits (e.g., dollars saved by tighter cost control or enhanced technical capability) would outweigh the additional oversight and administrative costs; however, the contracting officer did not justify the contract's cost-effectiveness. Without such an evaluation, Census had no assurance that an award-fee contract was appropriate.

Further, the award-fee payment structure provided little incentive for the contractor to excel in carrying out the terms of its award-fee contract performance objectives. For instance, the contractor could receive up to 74 percent of the award-fee pool—approximately \$48 million of the total \$65 million in the available pool over Phases I and II of the contract—for performance below the acceptable standards.

A. Census Bureau Has No Assurance That the Contract Type Is Appropriate for the Initial Contract Award

On February 15, 2005, the contracting officer chose to prepare a determination and findings document to justify the use of a cost-plus-award-fee contract. The Federal Acquisition Regulation states that the determination and findings must include enough facts, circumstances, or reasoning to clearly and convincingly support the contract type selected. However, the contracting officer did not properly prepare the determination and findings. The language contained in the determination and findings virtually repeated verbatim the Federal Acquisition Regulation requirement for using an award-fee contract without providing further explanation or supporting documentation. For example, the determination and findings cited that

- the administrative costs of conducting award-fee evaluations are not expected to exceed the expected benefits, and
- appropriate government surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used.

However, the determination and findings did not contain details of the particular circumstances or facts essential to support the determination, such as an analysis supporting the cost-effectiveness of using an award-fee contract.

While award-fee contracts can provide incentives to spur innovation and reduce costs, they require greater effort and more resources than other contract types to monitor and document

contractor performance. Subsequent to the DRIS contract award, the Office of Management and Budget has directed contracting officers to conduct and document risk and cost-benefit analyses when determining whether to use award-fee contracts.¹⁰ Risk and cost analyses related to the use of award-fee contracts should be prepared in writing and approved at a level above the contracting officer or as determined by the agency. In October 2009, the Federal Acquisition Regulation reinforced this requirement by adding a specific requirement for agencies to complete a determination and findings document to justify the cost-effectiveness of an award-fee contract before committing to this contract type.¹¹

B. Payment Structure Rewards Minimal Contractor Performance

Census rates contractor performance on a point scale, from 0 to 100. While the award-fee scores on the DRIS contract indicate satisfaction with the results of the contract, the payment structure (scale) used when calculating the award fees under this contract did not provide strong incentives for the contractor to attain better-than-average results. For example, the payment structure awarded no fee for a score of 49 or less, but did award a fee for a score of 50 or above. Table 2 shows the rating scale and potential award payouts. Thus, if the contractor receives a score of 50–74, meaning the contractor partially achieved the contract performance objectives, Census would bestow on the contractor between 50 to 74 percent of the award-fee pool. In the DRIS contract, the contractor could earn award fees of up to \$48 million of the available \$65 million over Phases I and II for only partially achieving performance objectives. Thus, only about \$17 million remained to further motivate the contractor to fully meet or exceed performance objectives. This type of payment structure does not only allow contractors to receive substantial payments for less-than-satisfactory performance; it also leaves little in the award-fee pool to encourage contractors to meet or exceed expectations and achieve desired outcomes.

Table 2. Performance Rating Scale and Potential Maximum Award Fees

Performance rating of:

- *Full Achievement* earns 93-100% of available award-fee pool
- *Substantial Achievement* earns 85-92% of available award-fee pool
- *Acceptable Achievement* earns 75-84% of available award-fee pool
- *Partial Achievement* earns 50-74% of available award-fee pool
- (No award fee if rated below 50%)

Source: DRIS Contract Award Fee Plan for Period No. 7

To encourage contractor excellence, the December 2007 Office of Management and Budget guidance states that there should be clear distinctions in possible award earnings between satisfactory and excellent performance. Office of Management and Budget guidance further states that no award fee should be paid for performance that is judged to be below satisfactory or does not meet basic contract requirements.

¹⁰ Office of Mgmt. & Budget, Executive Office of the President, December 4, 2007. *Appropriate Use of Incentive Contracts*.

¹¹ Subpart 16.4.

Although Phase II is almost complete, Census has an opportunity to revise its payment structure for Phase III, which the bureau awarded on September 24, 2010. Under the DRIS contract, the award-fee approach permits unilateral modification of the performance evaluation plan¹² to reflect changes in management emphasis. The bureau included a clause in the contract allowing unilateral change to the plan if the contracting officer provides written notice to the contractor no later than 15 days before the start of an evaluation period.

Recommendations

We recommend that the Census Bureau's Chief, Acquisition Division

1. ensure determination and findings on future contracts contain sufficient details of the particular circumstances or facts essential to supporting the use of an award-fee contract type;
2. conduct a cost-benefit analysis when choosing future award-fee contracts, and document how the benefits will offset the additional costs associated with administering such a contract; and
3. require the contracting officer to revise the award-fee payment structures of the DRIS contract for Phase III to create a structure that
 - a. provides greater incentive for excellent contractor performance, and
 - b. prohibits the contractor from receiving award fees for performance judged to be less than satisfactory.

¹² The performance evaluation plan is the basis for determining the amount of award fee and includes the award-fee criteria to be considered under each area evaluated; the percentage of award fee, if any, available for each area; and the frequency of evaluation periods.

Summary of Agency and OIG Comments

In responding to our draft report, Census concurred with all of our recommendations. We are encouraged that steps have already been initiated to address our recommendations, and we look forward to the bureau's action plan that will provide details on the corrective actions to be taken. See appendix B for the complete response. In it, Census also provided technical comments and suggested revisions to the introduction section of our report, which have been addressed in the report as appropriate.

Despite concurring with our recommendations, Census raised several concerns about our findings:

1. Census asserted that it did justify the use of an award-fee contract. As noted in our report, Census chose to prepare a determination and findings document to justify this type of contract. We found that the language in the determination and findings virtually repeated verbatim the Federal Acquisition Regulation requirement for using an award-fee contract, without providing further explanation or supporting documentation. For example, an award-fee contract is suitable when its expected benefits outweigh the additional administrative effort and cost required to monitor and evaluate contractor performance. However, rather than conduct a cost-benefit analysis, Census merely repeated in its determination and findings document the regulation's language that "the administrative costs of conducting award-fee evaluations are not expected to exceed the expected benefits."

Federal Acquisition Regulation part 1.7 requires that each determination and findings document include specific facts to support the determination being made—it is not enough to simply restate the regulation. In any case, in its response to our draft report, Census agreed to conduct a risk and cost-benefit analysis for all future award-fee type contracts to be included in a determination and findings document.

2. Census agrees that offering contractors large fees for less-than-satisfactory performance provides little incentive for them to meet minimum contract requirements. Yet, in response to our draft report, Census stated that it provided ample incentive for excellent contractor performance based on the fact that the contractor has earned an average of [REDACTED] percent of the available award-fee pool. While our audit did not assess the validity of award-fee payments made by Census based on documentation used to support them, we disagree with Census that ample incentive for contractor performance was provided simply because the contractor received almost all of the available award fees.

The Federal Acquisition Regulation states that award fees should be used to motivate excellent contractor performance. To encourage contractor excellence, OMB guidance states that there should be clear distinctions in possible award earnings between "satisfactory" and "excellent" performance levels. As noted in our report, the award-fee rating scale offered the contractor opportunities to earn award fees for what the DRIS award-fee plan describes as less-than-satisfactory performance. In this case, Census's scale could pay the contractor up to \$48 million, or 74 percent of the available award-fee pool, for less-than-satisfactory performance. Engaging in such a practice is inconsistent with the intent of award fees and could reduce the effectiveness of these fees as

motivators of performance. Census revised the award-fee rating scale in response to our recommendation in this report.

Census also disagreed that the planning process for modification number 21 was inadequate. However, we found that Census had internal control weaknesses associated with executing key pre-award processes for awarding the modification. Overall, Census did not follow federal acquisition and department contracting procedures and processes, such as appropriately documenting important decisions in the contract files. Circumventing the acquisition planning process does not provide assurance that sound investment methodologies were employed, or that the highest return on the investment or a determination of acceptable project risk was provided.

In its response, Census raised the following concerns about our findings with regard to modification number 21:

1. Census noted that it is the contracting officer's responsibility to make determinations regarding whether or not the proposed work is within scope. Census also stated that the dollar amount associated with the work is only one factor in determining scope. We acknowledge that these statements are true; however, as stated in our report, Census did not adhere to the Commerce policy that requires modifications to existing contracts be reviewed for legal sufficiency. Such reviews are critical because they ensure that all legal requirements are met and that the government's interests are protected. The contracting officer did prepare a determination statement that modification 21 was within scope of the original DRIS contract. However, the justification document was prepared in October 2009—2 years after the modification had been awarded—in response to our audit of the contract.

In its response to our draft report, Census acknowledged that it did prepare the within-scope determination documentation late, but pointed out that the Department's legal staff was part of the planning process and had been made aware of all changes as they occurred. Nevertheless, Federal Acquisition Regulation subpart 4.8 states that sufficient documentation must be maintained in order to keep a complete record of management officials' deliberations and key decisions. Documenting decisions provides support for actions taken, provides essential facts in the event of litigation, and serves as proof of management's due diligence as stewards of taxpayers' money.

2. Census believed that the price negotiation memorandum clearly demonstrated that price and cost analyses were conducted. The memorandum states that the contractor's proposed price was fair and reasonable based on reviews performed by various teams. However, the contract files did not contain any supporting documentation, such as a cost or price analysis, nor was Census able to provide us with any other evidence to adequately explain the basis for the determination.

Federal Acquisition Regulation subpart 4.8 cites cost and price analyses as examples of the types of record that should be retained in the contract file. In its response to our draft report, Census did agree to ensure that future price negotiation memorandums are well documented to reflect the process and actions that actually occurred.

3. Census contended that the Senior Procurement Executive, as a member of the Commerce Information Technology Review Board, approved the modified acquisition plan. Although the modified plan was approved, it was done contrary to departmental policy.

As noted in our report, Census did not adhere to the *Commerce Acquisition Manual* requirement that the Department's Senior Procurement Executive approve modified acquisition plans before issuance of the solicitation. In this case, the Senior Procurement Executive did not approve the modified plan until 5 months after the solicitation was issued and 2 months after the contractor's proposal evaluation process was completed, thus giving the appearance of "rubber stamping" the modified plan.

Appendix A: Scope and Methodology

We conducted this 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. To accomplish our objectives, we

- Reviewed Census's procurement practices used to support the bureau's decision to award modification number 21 and selection of the contract type for the DRIS contract. We assessed those procurement practices against criteria contained in the Federal Acquisition Regulation, the *Commerce Acquisition Manual*, Office of Management and Budget, and other applicable departmental and federal regulations and guidance.
- Interviewed a range of Census staff involved in the DRIS program, including the chief of contracting, contracting officer, and program management office representatives to determine the bureau's policies and business practices for contract awards and modifications. We also met with project management staff at Lockheed Martin.
- Analyzed documentation used to support Census's decision to award modification number 21 and selection of the contract type for the DRIS contract. The documentation in the contract file we reviewed included the contracting officer's acquisition plan, price negotiation memorandum, and determination and finding. We also reviewed briefing documents from Census requesting approval of the acquisition change and the procurement executive decision letter approving it. We also examined the bureau's program decision memorandums and decision documents related to telephone coverage follow-up. In addition, we reviewed the adequacy of the rating scale of the award-fee plan.
- Received assistance from our Office of Counsel to determine if modification number 21 was within the scope of the contract. To do so, we reviewed case decisions from the Comptroller General, the United States Court of Appeals for the Federal Circuit, and the Court of Federal Claims and the Competition in Contracting Act of 1984, and other relevant laws and regulations.

We conducted this audit between March 2009 and October 2010. We performed our work at the U.S. Census Bureau in Suitland, Maryland. We obtained an understanding of the internal controls of the processes used to award and administer DRIS contract modifications by reviewing the Commerce Standard Acquisition Reporting System (CSTARS). The Department relies on this system to allow managers to review and approve purchase requests, issue modifications, and obligate funds. We also interviewed Census staff about the CSTARS work flow. Furthermore, we met with Census acquisition staff to gain an understanding of the reasons for and timing of the modification award. While we identify and report on internal control deficiencies no incidents of fraud, illegal acts, violations, or abuse were detected within our audit. We identified weaknesses in the controls related to the bureau's pre-award process for awarding modification number 21 and award-fee processes. We did not rely on computer-processed data to perform this audit. We performed our work under authority of the IG Act of 1978, as amended, and Department Organizational Order 10-13, dated August 31, 2006.

Appendix B: Bureau Response

UNITED STATES DEPARTMENT OF COMMERCE
Economics and Statistics Administration
U.S. Census Bureau
Washington, DC 20233-0001

January 26, 2011

MEMORANDUM FOR: Mark Zabarsky, Director, Contract Audits

FROM: Michael L. Palensky, Chief, Acquisition Division,
U. S. Census Bureau

SUBJECT: Draft Audit Report No. OAE-19536

The attached is a revision to our memorandum of November 4, 2010 in response to Office of Inspector General memorandum dated October 4, 2010. In general, we are agreeing that some file documentation needed improvement but maintain that several months of planning and coordination with appropriate Department of Commerce entities, internal Census stakeholders, and the contractor took place prior to the release of the solicitation and the resultant execution of modification 21.

To facilitate your review of our comments, we used the same paragraph structure as the Draft Report. Our comments are italicized. The larger font italicized type in blue, is our response to your "Summary of Agency and OIG comments" of December 20, 2010.

Attachment

Attachment

Comments on Draft Audit Report No. OAE-19536

Introduction:

"In October 2005, the Census Bureau awarded a \$483 million cost-plus-award-fee contract to Lockheed Martin Corporation and its six subcontractors to develop and implement the Decennial Response Integration System (DRIS), an information system that would assist in 2010 Census data collection and analysis."

Comment:

The Contract was awarded to Lockheed Martin only. Lockheed Martin selected their subcontractors to assist in the DRIS effort.

"The remaining [REDACTED] million included increasing the available award-fee pool and design changes to the DRIS."

Comment:

*Much of the [REDACTED] million was for the re-obligation of **planned** Phase II work that was removed under the re-plan initiative under Contract Modification 004. Therefore, modification number 21 reinstated the development/planning aspect of the original Phase II work.*

"We found that the bureau did not have adequate contract pre-award practices in place to ensure that modification number 21 was properly awarded. Specifically, Census did not

- Perform the required review for legal sufficiency before issuing the solicitation;
- Retain essential documentation as part of the contract file to support the contracting officer's price reasonableness decision; and
- Have the acquisition plan – which reflected significant changes resulting from modification number 21 that affected the DRIS program – approved by the Department of Commerce's Senior Procurement Executive before issuing the solicitation."

Comment:

The timing issues cited above are addressed in detail in several of the below comments. Price reasonableness is addressed below and in the attached Price Negotiation Memorandum.

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The Plan submitted to the CITRB was referred to by the approver as the acquisition plan. It was a revision to the plan originally submitted to Commerce

(Attachment A to Exhibit 300B) and was not in the format prescribed by Procurement Memorandum 2007-03 of MARCH 28, 2007.

"Furthermore, it is unknown whether the bureau's use of an award-fee contract type for the initial DRIS contract was appropriate. This is largely because Census committed to this contract without sufficiently justifying its use as required by the *Federal Acquisition Regulation*." Award-fee contracts can motivate contractor performance when certain performance standards are applied. Census's award-fee practice of offering contractors large fees for less-than-satisfactory performance establishes a culture in which the Bureau expects to pay – and the contractor expects to receive – most of the available fee regardless of outcomes. These practices provide little incentive for contractors to meet minimum contract requirements, much less exceed them, and could compromise the integrity of the fee process.

Comment:

Many months of planning, market research, discussions with the Acquisition Review Team (ART), and past history with DCS 2000 processes and procedures, plus much of the Program Management Office (PMO) team having worked on DCS 2000, influenced the CPAF decision. Also, the PMO weighed in on their knowledge and ability to execute a CPAF process. Census believes that it did justify use of an award-fee contract type. The justification is in a memorandum from 2005 made available to the auditors. The justification is in full accordance with FAR section 16.401(e)(1)(i), contained in the 2005 FAR. Census will document the file appropriately with any required justification on any future CPAF contracts.

"Until Census improves the internal controls...it will continue to risk wasting taxpayer dollars by using poor practices and potentially paying sizable awards for subpar contractor performance."

Comment:

Census agrees that offering contractors large fees for less than satisfactory performance provides little incentive for contractors to meet minimum contract requirements. That is not the current practice of the Census Bureau. For DRIS, the Award Fee Determination Plan required Technical Monitors (TMs) to constantly monitor and report on the contractor's performance to ensure the best contract performance possible. A process of continuous feedback was designed to ensure that the contractor had every opportunity to improve its performance throughout the award-fee period if problems were identified. Objective measures were employed in the monitoring, such as delivery schedules, quality assurance surveillance plans, earned value data, and other cost controls. During the operational phase of DRIS monitoring, Census established additional objective performance measures, such as elimination of backlogs, data quality standards, case completion levels, etc. The above statement is speculative in that it uses the phrases "risk wasting" and "potentially paying." In fact, subpar performance never occurred on the DRIS contract. For the past seven award-fee periods the contractor has earned an average of [REDACTED] % of the available award-fee pool. This is because the contractor has been highly successful. Please refer to the last award fee period #7 documentation of all objective performance measures met and or exceeded.

Findings and Recommendations

I. DRIS Contract Modification's Pre-Award Process Needed Improvement

Comment:

Modification 21 was the result of an earlier major re-plan. Several months of planning and decision points were required to produce the resultant modification. Throughout the planning and decision process appropriate levels of coordination with DOC approval officials were maintained.

"Census did not ensure that the modification was reviewed for legal sufficiency before the solicitation was issued."

Comment:

DOC legal staff was a part of modification 21 planning and review process and was aware of the all changes in a real-time mode. We will make sure in the future that legal reviews are completed as required.

"Contract files do not include documentation that price and/or cost analysis were performed for determining fair and reasonable cost."

Comment:

The Price Negotiation Memorandum (PNM), the technical evaluations, and the documented rounds of discussions demonstrate that price and cost analysis and determination were conducted. However, Census will make sure that future PNM's are well documented to reflect the process and actions that actually occurred.

"Acquisition and contracting officials stated that control weaknesses occurred because the officials found the pre-award process confusing and did not understand all of the requirements."

Comment:

Upon further explanation from the OIG, the above statement is interpreted to mean that the contracting officials found the DOC pre-award process imprecise and incomplete,

and therefore difficult to adhere to. The requirements referred to above are the pre-award process and documentation requirements, not the DRIS project requirements.

A. A Review for Legal Sufficiency Was Not Performed

“We found that the contracting officer did not obtain the required review for legal sufficiency before issuing the solicitation, leaving Census vulnerable to protests. Instead, the acquisition office – through its own interpretation – determined that the modification was within the scope of the contract and did not require a legal review.”

Comment:

DOC legal staff was a part of modification 21 planning and review process and was aware of the all proposed change. It is the contracting officer's responsibility to make determinations regarding whether or not the proposed work is in or out of scope.

“However, the acquisition office could not provide documentation demonstrating that the modification was within scope and did not need to be re-competed.”

Comment:

The dollar amount associated with the work is only one factor in determining scope. The contracting officer determines if changes are within scope or constitute “Cardinal changes” that would require a justification for other than full and open competition or must be competed. See the attached document titled “In Scope Determination.” This document is the justification for modification 21 within scope determination.

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We concede that the within scope determination documentation was prepared Late.

B. Modification Awarded Without Documenting Price Reasonableness

Comment:

See attached Price Negotiation Memorandum.

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Cost and Price were conducted. In the future, we will ensure that PNM's are fully documented.

C. Revised Acquisition Plan Was Not Approved Timely by Procurement Executive

"Census did not have the acquisition plan approved by the Senior Procurement Executive or request a waiver for doing so before issuing the solicitation."

Comment:

DOC memorandum dated August 17, 2007, signed by Al Sligh Jr., approved the proposed modification 21. Therein, Mr. Sligh states "the CITRB has approved the technical merits of the Phase II requirements as described in exhibit 300 and the presentation to the CITRB for this effort." Also, he states "We are approving this proposed modification after review of the modified acquisition plan submitted on July 27, 2007 and based on the briefing to the CRTB on July 25, 2007." Census contends that there was no initial formal acquisition plan required. The formal acquisition plan prior to release of the DRIS RFP was the Attachment A to the E300.

Recommendations

We recommend that the Census Bureau's Chief, Acquisition Division

1. Develop and implement internal controls to ensure that, going forward, pre-award policies and processes for the deficiencies identified in this audit report are adhered to; and
2. Direct the DRIS contracting officer to
 - a. Obtain reviews for legal sufficiency to ensure that any future modifications under the DRIS contract are within the scope of that contract,
 - b. Retain as part of the contract file the supporting documentation used to make the price reasonableness determination, and
 - c. Have all acquisition plans with significant revisions that would affect the DRIS program be approved by the Senior Procurement Executive before issuing the solicitation.

Comment:

1. *Concur. This recommendation has been implemented by the establishment of the Census Contract Review Board (CRB) that is responsible for the review and approval of solicitations, awards, and modifications.*
2. *a. Concur*
b. Concur
c. Concur

II. Census Bureau's Practice for Justifying an Award-Fee Contract and Establishing the Payment Structure are not consistent with Federal Acquisition Guidance

“Contracting Officers are required to prepare determination and findings to justify a cost-reimbursement contract (as is the case for using award-fee contracts), and are generally required to include in the contract file documentation showing why a particular contract type was selected.”

Comment:

We understand, and will comply, with requirements in the current FAR 16.401 to conduct a risk and cost benefit analysis for all future CPAF contract types to be included in a Determination and Findings.

“For instance, the contracting officer did not justify the cost-effectiveness of selecting an award-fee contract. Through an evaluation of the administrative costs versus the expected benefits, the contracting officer should be able to assess whether the benefits of an award-fee contract outweigh the additional costs of overseeing and administering the contract”

Comment:

See above comment

A. Census Bureau has no assurance that the Contract Type is appropriate for the Initial Contract Award

“However, the determination and findings did not contain details of the particular circumstances or facts essential to support the determination, such as an analysis supporting the cost-effectiveness of using an award fee contract.”

Future D&F's will be appropriately documented to support the contract type chosen.

“Subsequent to the DRIS contract award, the Office of Management and Budget has directed contracting officers to conduct and document risk and cost-benefit analyses when determining whether to use award-fee contracts.”

We agree that OMB did issue a memorandum to this effect dated December 4, 2007, after both the DRIS award and DRIS modification 21 were in place.

B. Payment Structure Rewards Minimal Contractor Performance

We have corrected the Performance Rating spectrum to correct this anomaly. See below.

DOC OIG Recommendations

We recommend that the Census Bureau's chief, acquisition division

1. Ensure determination and findings on future contracts contain sufficient details of the particular circumstances or facts essential to supporting the use of an award-fee contract type
2. Conduct a cost-benefit analysis in choosing future award-fee contracts, and document how the benefits will offset the additional costs associated with administering such a contract; and
3. Require the contracting officer to revise the award-fee payment structures of the DRIS contract for Phase III that
 - a. Provides incentives for excellent contractor performance, and
 - b. Prohibits the contractor from receiving award fees for performance judged to be less than satisfactory.

Comment

1. *Concur. Census Bureau policy includes assurances that determinations and findings for use of award-fee contract types for all future contracts shall be comprehensive and sufficiently detailed to support this contract type.*
2. *Concur. The Census Bureau will conduct a cost-benefit analysis for each and every future proposed award-fee contract type to ensure benefits offset the additional costs of administering this contract type. This requirement is specified in FAR 16.401(e)(1)(iii).*
3. *Concur. We maintain that from contract inception, we have complied with recommendation 3.a because we provided ample incentive for excellent contractor performance. This is proven by the fact that over all of the past seven award-fee periods the contractor has earned an average of [REDACTED] % of the available award-fee pool. We do not agree with the implication in recommendation 3a, that we have not provided these incentives. Through DRIS Contract Modification M097 we have revised the award fee performance rating spectrum (See attached Mod 97 Spectrum) to address the audit recommendation to prohibit receipt of rewards for less than satisfactory performance. The below table compares the DRIS rating spectrum with FAR guidance and shows that the DRIS spectrum is a bit more rigorous at the lower scores and a bit more liberal at the higher scores, yet all-in-all comparable. Although we have complied with this recommendation, we also note that this part of the performance spectrum has yet to become germane to the DRIS contract.*

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Since we have made the recommended changes to the Performance Rating spectrum, we see no reason to continue the semantics issues.

<i>FAR 16.401 Guidance</i>		<i>DRIS Modification M097Revision</i>		
<i>Award-Fee Adjectival Rating</i>	<i>Award-Fee Pool Available to be Earned</i>	<i>Award-Fee Adjectival Rating</i>	<i>Scoring Range</i>	<i>Award-Fee Pool Available to be Earned (Conversion to award fee percentage)</i>
<i>Excellent</i>	<i>91% - 100%</i>	<i>Full Achievement</i>	<i>93% - 100%</i>	<i>93% - 100%</i>
<i>Very Good</i>	<i>76% - 90%</i>	<i>Moderate Achievement</i>	<i>80% - 92%</i>	<i>80% - 92%</i>
<i>Good</i>	<i>51% - 75%</i>	<i>Adequate Achievement</i>	<i>60% - 79%</i>	<i>60% - 79%</i>
<i>Satisfactory</i>	<i>No Greater Than 50%</i>			
<i>Unsatisfactory</i>	<i>0%</i>	<i>Unacceptable</i>	<i>0% - 59%</i>	<i>0%</i>

Attachment A – DRIS PERFORMANCE RATING SPECTRUM

Table J.15.4-2 - Performance Rating Spectrum

Scoring Range	Description	Conversion to award fee percentage
93-100	Full Achievement Contractor consistently meets or exceeds all Census Bureau performance objectives. Management, supervision, performance, response times, and cost control effectiveness are performed consistently at a level considered the best any Contractor could be expected to achieve, under similar circumstances. Inspections seldom find deficiencies. Errors found during inspections/reviews are quickly and effectively resolved prior to issuance or production.	93-100
80-92	Moderate Achievement Contractor consistently meets all Census Bureau performance objectives. Management, supervision, performance, response times, and cost control effectiveness are performed consistently at a level considered higher than any Contractor could be expected to achieve, under similar circumstances. . Minor problems are recognized and corrected.	80-92
60-79	Adequate Achievement Contractor achieves satisfactory Census Bureau performance objectives. No major problems. Areas requiring improvement are approximately offset by better performance in other areas. Management, supervision, performance and cost control are not consistently performed across the contract.	60-79
0-59	Unacceptable Areas of adequate or better performance are significantly offset by poor performance in other areas. Quality of performance indicates a need for the Contractor to take immediate corrective action. Management/supervision is weak, resulting in an ineffective work program. Sporadic omission of work occurs. Complaints are frequent. Control of costs is questionable. Performance is having a negative impact on overall Census Bureau mission. Performance is at a level where the Government may consider termination action. NO FEE IS EARNED BY THE CONTRACTOR IN THIS RANGE.	0