

**(U) Management Assistance Report: Modification and Oversight of the Bureau of Medical Services' Contract for Aeromedical Biocontainment Evacuation Services Violated Federal Requirements AUD-SI-19-11, December 2018**

**(U) Summary of Review**

(U) During an audit of the Department of State's (Department) aviation program, the Office of Inspector General (OIG) discovered that the Bureau of Medical Services (MED) awarded a sole-source contract (SAQMMA16C0077) in April 2016, on the basis of one contractor's unique capability to conduct aeromedical biocontainment evacuations. Although the contract did contain provisions relating to some peripheral services that were attendant to the specialized aeromedical biocontainment evacuations, the Department did not—at least until its response to a draft of this report—suggest that any of these services themselves justified a sole-source, non-competitive award.

(U) OIG found that MED never used the unique capability for an actual aeromedical biocontainment evacuation. Instead, from the time the contract was awarded, the aircraft was used exclusively for other activities, such as evacuations not requiring biocontainment or for the deployment of hurricane response teams. On two occasions MED held training events related to aeromedical biocontainment evacuations. Except for these two events, MED provided no documentation evidencing the aircraft's use for its unique and critical biocontainment capability.

(U) In September 2017, the Contracting Officer modified the aeromedical biocontainment evacuation contract on the basis of a recommendation from MED to stipulate that the aeromedical aircraft based in Africa could be used as an air taxi to transport Department employees between Kenya and Somalia. OIG determined that since the modification, the Kenya to Somalia air transport service was the primary use of the aircraft. This use did not require the unique biocontainment evacuation capability upon which the justification for the sole-source procurement was based. To the contrary, this change in the purpose of the contract—from emergency, biocontainment evacuation services to providing essentially commercial air taxi services—constituted such a significant change in the scope of the contract that it required full and open competition under the Competition in Contracting Act.

(U) OIG does not question at this time that a sole-source award for the biocontainment evacuation capability was warranted in 2016 or that at least some other services could be properly included as part of that contract. OIG also recognizes the need to develop and maintain this unique evacuation capability at the time of the original contract award, especially in the context of the 2014 Ebola outbreak in West Africa. However, on the basis of the actual missions assigned to these aircraft from the time of the 2016 award forward and the nature of the modification, OIG concludes that the 2017 modification was improper. That modification permitted the aircraft to be used almost exclusively for routine, non-emergency missions unrelated to the unique capability that had justified the sole-source award. As a result, the Department has used the sole-source contract for other services at higher costs to the taxpayer than would have been incurred using competed sources or the Department's own aircraft. OIG also notes that, in the course of evaluating the Department's response, it

learned that the Department of Defense (DOD) has aircraft with biocontainment evacuation capability; this factor also casts doubt on the appropriateness of the modification.

(U) OIG determined that MED used the aircraft for a range of purposes beyond that justifying the sole-source procurement for two primary reasons. First, the critical need for aeromedical biocontainment evacuations subsided when the Ebola crisis ended in 2016.<sup>1</sup> According to the Contracting Officer's Representative (COR), rather than have the two aeromedical aircraft sit idle, the Department decided that the aircraft—one of which is based in the United States and the other in Africa—would be used for other purposes. Second, MED believed that using the aircraft for such other purposes would allow for cost savings and provide other value to the Department. However, MED's cost analysis and value-added analysis do not support these conclusions. To the contrary, using other Department-owned aircraft would have saved money and provided more value to the Department.

(U) As a result of the September 1, 2017, modification and attendant deviation from the original purpose and sole-source justification for the procurement, the Department has not taken advantage of aviation assets that the Department owns and that could have been used for air taxi services in Africa. Accordingly, MED expended funds imprudently. OIG estimates the Department can put approximately \$24 million in taxpayer funds to better use by not exercising the next 2 option years of contract SAQMMA16C0077.

(U) OIG also found that MED did not comply with Federal aviation regulations and Department aviation policies that govern use of Commercial Aviation Services (CAS). Specifically, relevant regulations require agencies to maintain oversight of various aspects of the flight program and to report on costs of these CAS.<sup>2</sup> Although the services procured under SAQMMA16C0077 qualified as CAS, MED did not comply with the requirements for establishing Flight Program Standards and did not report the cost and use of CAS aircraft, as required. Furthermore, Department policies allow the use of CAS only when it is more cost effective than using Department-owned aircraft and require the Aviation Governing Board (AGB) to approve aviation contracts. OIG found that using MED's aeromedical biocontainment

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<sup>1</sup> (U) On January 14, 2016, the World Health Organization declared the end of the outbreak of Ebola virus disease in Liberia and stated that all known chains of transmission have been stopped in West Africa. Additionally, on March 29, 2016, the World Health Organization issued the following statement: "[The] Ebola transmission in West Africa no longer constitutes an extraordinary event, that the risk of international spread is now low, and that countries currently have the capacity to respond rapidly to new virus emergences. Accordingly, in the Committee's view the Ebola situation in West Africa no longer constitutes a Public Health Emergency of International Concern and the Temporary Recommendations adopted in response should now be terminated. The Committee emphasized that there should be no restrictions on travel and trade with Guinea, Liberia and Sierra Leone, and that any such measures should be lifted immediately." The World Health Organization reiterated that flare-ups may occur but stated that, at that time, the disease no longer constituted an international emergency. Since then, according to the Centers for Disease Control and Prevention, three additional Ebola outbreaks have occurred, all within the Democratic Republic of the Congo.

<sup>2</sup> (U) Commercial Aviation Services include contracting for full services (i.e., aircraft and related aviation services for exclusive use).

evacuations contract for air taxi services was not more cost-effective than using Department-owned aircraft and that the AGB, moreover, did not approve the contract. These deficiencies occurred, in part, because MED incorrectly believed that the aircraft it uses did not have to comply with applicable Federal regulations or Department policy. Even MED acknowledges, however, that the General Services Administration (GSA) informally opined that the services provided under SAQMMA16C077 should be considered CAS and were therefore subject to relevant regulations and policies. Additionally, MED does not have sufficient contract oversight officials. The lack of oversight provided by an individual with technical aviation expertise poses safety risks to Department personnel.

(U) OIG made seven recommendations to address the deficiencies identified in this report. On the basis of the Deputy Under Secretary for Management's response to a draft of this report, who also responded on behalf of MED and the Bureau of Administration, OIG considers three recommendations resolved pending further action, three recommendations unresolved, and one recommendation closed. The Bureau of International Narcotics and Law Enforcement Affairs (INL) provided a separate response, in which they concurred with the coordinating actions required for the three recommendations made to INL.

(U) A synopsis of the Deputy Under Secretary for Management's and INL's comments and OIG's reply follow each recommendation in the Results section of this report. The Deputy Under Secretary for Management's response to a draft of this report is reprinted in its entirety in Appendix C, which includes general and technical comments. INL's response to a draft of this report is reprinted in its entirety in Appendix D. OIG's reply to the Deputy Under Secretary for Management's general comments concerning the audit findings is presented in Appendix E.

(U) OIG concludes with a few preliminary comments regarding that response, much of which seems to misconstrue OIG's position.

(U) First, OIG does not, at this time, question the 2016 sole-source award for the biocontainment evacuation capability. OIG also does not, at this time, independently question the various other uses for which the contract was employed up until the time of the modification. OIG does, however, question the modification in light of those other uses—none of which related to biocontainment evacuation. This fact should have alerted the Department of the need to reconsider its use of this contract. Instead, the Department expanded the contract and thereby committed itself to a potentially long-term obligation for routine services at costs that were originally established through a contract that was procured as a non-competitive, sole-source procurement.

(U) Second, although the Department has now asserted that the original sole-source contract was intended to be used broadly and encompassed a wide-range of services outside of biocontainment evacuation, the supporting documents do not substantiate this claim and,

indeed, raise other concerns. The “Justification for Other than Full and Open Competition” (JOFOC) enabling the sole-source award generally declared a Department need for “multimission aircraft and aviation support services.” The substantive justification set forth in that document, though, that explained why a sole source award was necessary, however, pertained only to an aeromedical biocontainment evacuation capability and related services necessary to sustain that capability. That is, all of these additional services related to emergency situations. The substantive justification contained no discussion or explanation for combining or “bundling”<sup>3</sup> contract requirements into a “total package approach” to include services not a part of an aeromedical biocontainment evacuation system (ABCS) capability or related emergency evacuation services. Moreover, in assessing the Department’s response, OIG conducted additional analysis that raised other concerns. For example, contrary to the Department’s assertions, it failed in 2016 to consider other companies that could potentially provide the non-ABCS services, and, MED did not at that time fully evaluate whether other sources within the government, such as the DOD could meet the Department’s needs at lower cost. The possible availability of ABCS capability elsewhere in the government and the possible availability of suitable lower-cost sources for non-ABCS services were outside the scope of the audit. This information, however, reinforces OIG’s recommendations to take a different approach going forward, and we specifically advise the Department to consider other resources—governmental and non-governmental— that may have become available since the original contract was awarded.

(U) Finally, even though much of the Department’s response invokes national security and policy concerns and argues that it is essential for the Department to have a means of evacuating personnel from its East Africa posts, OIG does not and never has suggested that the Department should forego any needed capabilities. OIG moreover does not purport to question the Department’s programmatic, policy decisions. OIG’s point is much more limited: modifying a sole source contract for biomedical evacuation services is not the appropriate way to obtain these other services that the Department now says are essential for its mission. Those services should be obtained through existing government resources or through an appropriate competitive contract.

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<sup>3</sup>(U) The term “bundling” is most commonly used in Federal small business law. “Bundling of contract requirements” is defined in the Small Business Act (SBA) to mean “consolidating 2 or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small-business concern...” 15 U.S.C. § 632(o)(2). The term “bundling” is also used more loosely, however, as a synonym for the “total package approach”—that is, combining divisible components of an agency procurement requirement into one contract awarded to a single vendor able to provide every component, even though other vendors might be able to provide one (but not every) individual component if the procurement were divided into multiple contracts. *Masstor Systems Corp.*, B-211240 (Comp. Gen. Dec. 27, 1983). The Department’s response appears to use “bundling” in the latter sense. In this report OIG uses “bundling” interchangeably with “total package approach” and not as the term is defined in the SBA.