UNITED STATES OFFICE OF PERSONNEL MANAGEMENT

Washington, DC 20415

Office of the
Inspector General

October 14, 2015

Report No. 4A-RI-00-16-014

MEMORANDUM FOR BETH F. COBERT
Acting Director

FROM: PATRICK E. McFARLAND
Inspector General

Patrick E McFarland

SUBJECT: Management Alert – Serious Concerns Related to OPM's Procurement Process for Benefit Programs

## Executive Summary

The U.S. Office of Personnel Management's (OPM) Office of the Inspector General (OIG) is issuing this Management Alert to bring to your immediate attention very serious concerns related to OPM's procurement process for various benefit programs. Specifically:

- The Federal Flexible Spending Account Program (FSAFEDS) contract, a Federal Acquisition Regulation (FAR) contract, has exceeded a 12-year period of performance, well beyond the 5-year limitation of the FAR, without a single re-competition and is almost 1-year behind the initial established timelines for the current re-competition.

- Allowing program offices to administer contracts after contract award has created a conflict of interest whereby program continuity is overriding the offices' responsibilities for ensuring contracts are re-competed in accordance with the FAR.

This procurement has reached a critical stage, as the period of performance has already significantly exceeded the limitations of the FAR. Should these items not be addressed, we are concerned that the Government will not receive the best value in meeting its needs for these programs and could potentially overpay for the services provided.

## Background Information

These concerns initially came to light during the performance of our audit work related to the FSAFEDS program (Program). The FSAFEDS contract was initially awarded on April 14, 2003, to SHPS Human Resources Solutions, Inc., now known as ADP Benefit Services KY, Inc. On January 1, 2004, the Federal Government became responsible for paying the Program's administrative fees on behalf of its enrolled employees, which made the FAR applicable to the contract. This was ratified in Contract Modification 003, which was signed on June 25, 2007, and made retroactively effective as of January 2004. Once the FAR became applicable to the contract, FAR 17.104(a) limited the number of years the contract could continue without being re-competed. Specifically, this clause **limits this type of contract to a five-year period** unless otherwise authorized by statute. To date, this **contract has now exceeded a 12-year period, with extensions to the contract's period of performance being granted on four separate occasions**, in spite of substantial changes to the Government's program requirements that have occurred during this time.

## Review Results and Recommendations

Our audits of both the FSAFEDS program operations for contract years 2008 through 2010 and OPM's administration of the FSAFEDS program for contract years 2006 through 2009, as well as our observation of the FSAFEDS procurement process that began in February of 2015, revealed concerns regarding OPM's procurement process for benefit programs. While these issues were not specifically addressed in either report, as the issues were outside the scope of these audits, we believe these concerns are significant enough to warrant bringing them to your attention to ensure that future program procurements sufficiently cover the Government's interests and provide the best value to the Government, as well as to the taxpayers whose tax dollars fund the Program's administrative fees.

**1. The FSAFEDS Contract's Period of Performance has Significantly Exceeded the Limits Established Under the FAR and should be Awarded Without Additional Delays or Extensions to the Period of Performance.**

The initial FSAFEDS contract term was set for seven years, with an unlimited number of successive option periods. The base period of performance began on January 1, 2003, and ended on December 31, 2009. Contract Modification 006, effective January 1, 2009, extended the performance period through December 31, 2012. Contract Modification 009, effective January 1, 2013, further extended the period of performance through December 28, 2013. These extensions occurred in spite of a November 2007 recommendation from OPM's Center for Internal Control and Risk Management (CICRM), which proposed that the contract be re-competed when the original term expired on December 31, 2009. This recommendation was made primarily because the Government's requirements for the FSAFEDS program, included in the original contract, had changed substantially over the course of the contract.

However, since the issuance of that recommendation, the contract's period of performance has been extended a total of four times, resulting in a current contract end date of December 23, 2015. With this most recent extension, the contract has now exceeded a 12-year period, in spite of substantial changes to the Government's program requirements that occurred over the course of the contract's term and in spite of FAR regulations which limit the procurement for this type of service to a 5-year performance period. Furthermore, in the absence of a statutory requirement, the contract's initial term of seven years with an unlimited number of options is adverse to the Government's best interest because of a lack of built-in competition for enrollees that is inherent in other benefit programs administered by

OPM (i.e., the Federal Employees Health Benefits Program and the Federal Employee Dental and Vision Insurance Program).

These concerns were relayed by our office to the Federal Employee Insurance Operations group (FEIO) and were discussed during meetings that occurred during calendar years 2012 and 2013. In late 2013, we were assured by FEIO staff that policies and procedures were in place to ensure that future re-competitions for all programs administered by FEIO would be handled in a timely manner. As part of this discussion, we were provided with a procurement timeline, the first of three timelines for the current FSAFEDS procurement.

The first timeline projected a contract award date of June 2014, and a contract effective date of December 21, 2014, which would have been in line with contract modification 011's extension of the period of performance to December 26, 2014. However, this procurement timeline was subsequently replaced with a second timeline in April 2014. This new timeline projected a contract award date of December 18, 2014, and appeared to have the same contract effective date (December 21, 2014) as the first timeline. Because the award date and the new contract's effective date were only days apart however, we had serious concerns that the current contract would need to be extended again to allow for an appropriate transition period.

This extension did indeed occur through contract modification 013, which extended the contract's period of performance from December 26, 2014 to December 23, 2015. However, the extension did not occur because the contract award date was too close to the current expiration date to allow for an appropriate transition period. It occurred because the Request for Proposal was not posted to FedBizOps until December 22, 2014, a full five months after the second timeline's target date of July 16, 2014.

A third procurement timeline was provided to our office during a procurement kickoff meeting on February 8, 2015. This current timeline projected a contract award date of June 1, 2015, with an intended contract effective date of September 1, 2015. This most recent contract award date is a full year after the initial contract award date included in the first procurement timeline. However, as has been the troubled history of this procurement, the current contract award date has come and gone yet again, without a contract award, and OPM is quickly approaching the contract's current expiration date.

Because of the continued procurement delays, we elevated our concerns to OPM's Chief of Staff through the issuance of two Memoranda. The first Memorandum was issued to then Chief of Staff Anne Marie Habershaw on June 11, 2014 (see Attachment A). The second Memorandum was issued to then Acting Chief of Staff Chris Canning on July, 2, 2015 (see Attachment B). Both Memoranda outlined concerns with how long this contract, a FAR contract, has been in place without a single re-competition and the delays we were continuing to see with the current procurement. In our opinion, this procurement has reached a critical stage and <u>**future extensions should not be considered**</u>, as the period of performance has already significantly exceeded the limitations of the FAR.

**Recommendation 1**

We recommend that the needed actions be taken as soon as possible to ensure a new contract is awarded, to include an appropriate transition period, before the current contract's expiration date of December 23, 2015.

**Recommendation 2**

We recommend that controls be implemented to ensure that future program procurements follow FAR requirements and that the contracts' periods of performance adhere to the limits under the FAR.

**2. OPM Should Consider Consolidating all Future Program Procurements Under its Office of Procurement Operations.**

As stated above, in late 2013 we were assured by FEIO that policies and procedures were in place to ensure that future re-competitions for all programs administered by FEIO would be handled in a timely manner. In the two years since, despite the issuance of two Memoranda to the Chiefs of Staff expressing our concerns, not only has a new FSAFEDS contract still not been awarded, but the re-competition of the Federal Long Term Care Insurance Program contract is also almost a year behind the target dates of its **second** procurement timeline.

We believe the delays can be attributed to the following:

- A lack of oversight of FEIO by OPM's Office of Procurement Operations after contract award; and,

- FEIO's need for program continuity has overridden its responsibilities for ensuring contracts are re-competed in accordance with the FAR.

While OPM's Office of Procurement Operations is involved in the procurement process through contract award, it then transfers its responsibilities to FEIO for contract administration. This is understandable since the employees working for FEIO are the program experts and are best able to address questions that typically arise in the administration of programs under their purview. However, this should not absolve the Office of Procurement Operations from keeping abreast of the procurement's status, to include being knowledgeable of the modifications that have been issued and the options that have been exercised.

Additionally, as the contract's period of performance gets closer to its end date, the Office of Procurement Operations should be reaching out to FEIO to make sure that they have begun the re-competition process to ensure that the contract will be awarded before the current contract's performance period ends. If this has not occurred, the Office of Procurement Operations should elevate this concern to the appropriate management levels within the agency to ensure the contract's re-competition is put back on track for a timely award or that proper justifications to extend the period of performance allowable under the FAR are documented. Inadequate planning or running out of time to compete and award a new contract are not proper justifications for extending a contract.

Along the same lines, while we understand the logic behind delegating responsibilities to FEIO to administer its programs' contracts, unfortunately, FEIO's interest in ensuring program continuity has overridden its responsibility to ensure that future procurements are properly planned, are awarded timely, and follow the protocols established by the FAR. From what we have observed with the current contract delays, there appears to be **no sense of urgency** to ensure the contracts are re-competed in a timely manner since FEIO can modify the contracts to extend the period of performance, as was done multiple times with the FSAFEDS and BENEFEDS procurements.

Finally, while program continuity for these benefit programs is extremely important, and we are not suggesting that benefit programs be allowed to lapse while waiting for a new contract to be awarded, benefit continuity is but one of many factors that must be considered before extending a period of performance under the FAR. Another factor to be considered is whether the option to extend is the most advantageous to the Government. As we previously stated, for a program like FSAFEDS, where there are constant changes in the market for this type of benefit and where there is a lack of built-in competition for enrollees that is inherent in other benefit programs administered by OPM, we argue that allowing the FSAFEDS contract to continue for over 12 years without ever being re-competed is not the most advantageous option for the Government, nor for the taxpayers whose tax dollars fund the Program's administrative fees.

**Recommendation 3**

We recommend that OPM consider consolidating all contract administration functions under its Office of Procurement Operations and that these responsibilities no longer be delegated to the program offices.

**Recommendation 4**

We recommend that future contracting officers assigned to these contracts not have responsibilities for administering the benefit programs, as we believe that these dual roles are a conflict of interest and will result in continued delays to future re-competitions, especially when program continuity is at risk.

This Management Alert has been issued by the Office of the Inspector General (OIG) to U.S. Office of Personnel Management (OPM) officials for resolution of the recommendations contained herein. As part of this process, OPM may release the Management Alert to authorized representatives of the audited party. Further release outside of OPM requires the advance approval of the OIG. Under section 8M of the Inspector General Act, the OIG makes redacted versions of its reports available to the public on its webpage.

In accordance with Office of Management and Budget Circular A-50 and/or Public Law 103-355, all audit recommendations must be resolved (agreement reached on actions to be taken on reported recommendations; or, in the event of disagreement, determination by the agency follow-up official that the matter is resolved) within six months of the date of the report.

Since the OIG exercises oversight concerning the progress of corrective actions, we request that the Healthcare and Insurance Office (HIO) provide us with a report describing the corrective action taken, and in instances where the corrective action differs from the recommendation, include the rationale for the resolution. If the corrective action has not been completed, we ask that the HIO provide us with a report on the status every March and September thereafter until the corrective action has been completed.

Please contact me, on 606-1200, if you have any questions regarding this report, or someone from your office may wish to contact Michael R. Esser, Assistant Inspector General for Audits, on [redacted], or [redacted], Chief, Special Audits Group, on [redacted].

Attachments

cc: Robin Jacobsohn
General Counsel

[redacted]
Senior Advisor

[redacted]
Office of the General Counsel

Angela Bailey
Chief Operating Officer

Dennis D. Coleman
Chief Financial Officer

John O'Brien
Director, Healthcare and Insurance

Jonathan Foley
Director, Planning and Policy Analysis

Mark W. Lambert
Associate Director, Merit System Audit and Compliance

Janet L. Barnes
Director, Internal Oversight and Compliance

Alan Spielman
Assistant Director for Federal Employee Insurance Operations

[redacted]
Deputy Assistant Director for Federal Employee
Insurance Operations

[redacted]
Chief, Audit Resolution

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

Office of the
Inspector General

June 11, 2014

MEMORANDUM FOR ANN MARIE HABERSHAW
Chief of Staff

FROM: NORBERT E. VINT
Deputy Inspector General

Norbert E. Vint

SUBJECT: Concerns Regarding the Re-competition of the FSAFEDS Contract

In the last few years, our office has had concerns regarding the Federal Flexible Spending Account Program (FSAFEDS) Contract. Specifically, we were very concerned about the length of time this contract was in place without it being re-competed. These concerns were provided to the U.S. Office of Personnel Management's (OPM) Federal Employee Insurance Operations (FEIO) group, and we were assured that our concerns were being addressed. However, issues have recently been brought to our attention that lead us to believe that our concerns are still valid, and we feel it is necessary to bring these concerns to your attention.

The FSAFEDS Contract was initially awarded to SHPS Human Resources Solutions, Inc., now known as ADP Benefit Services KY, Inc., on April 14, 2003. On January 1, 2004, the Federal Government became responsible for paying the Program's administrative fees on behalf of its enrolled employees, which made the Federal Acquisition Regulations (FAR) applicable to the contract. This was ratified in Contract Modification 003, which was signed on June 25, 2007, and made retroactively effective as of January 2004.

Once the FAR became applicable to the contract, FAR 17.104(a) limited the number of years the contract could continue without being re-competed. Specifically, this clause states that multi-year contracting is used "to acquire known requirements in quantities and total cost not over planned requirements for **up to 5 years** unless otherwise authorized by statute." To date, this contract has exceeded a 10-year period, in spite of substantial changes to the Government's program requirements that have occurred during this time.

This concern was relayed to FEIO personnel and was discussed during meetings that occurred during calendar years 2012 and 2013. In late 2013, we were assured by FEIO staff that policies and procedures were in place to ensure that future re-competitions for all programs administered by FEIO would be handled in a timely manner. As part of this discussion, we were provided with re-competition timelines for the FSAFEDS program. However, a recent review of these timelines shows that OPM is far behind its target procurement due dates for the FSAFEDS program. For example, the Request for Proposal (RFP) document was to have been completed on the initial timeline schedule by November of 2013. However, under the revised timelines, the due date for posting the RFP to Fed Biz Ops is July, 16, 2014; eight months after the original target date.

These same revised procurement timelines now anticipate awarding of the new contract on December 18, 2014, two days before the current contract expires. Even if FEIO meets this goal, which based on the history of the procurement is questionable, the current contract will need to be extended to allow for a transition period. We feel it is important for the Director to be aware of this procurement and ensure that the new contract is awarded in a timely manner and that any extension of the current contract be kept to a minimum.

Please contact me at 606-1200 if you have any questions, or someone from your staff may contact Michael R. Esser, Assistant Inspector General for Audits, at [redacted], or [redacted], Chief, Special Audits Group, at [redacted].

Attachment B

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT
Washington, DC 20415

Office of the
Inspector General

July 2, 2015

MEMORNADUM FOR CHRIS CANNING
Acting Chief of Staff

FROM: NORBERT E. VINT
Deputy Inspector General

SUBJECT: Continued Concerns Regarding the Re-Competition of the FSAFEDS Contract

As per our discussion on July 1, 2015, attached is my memorandum, dated June 11, 2014,to then Chief of Staff Anne Marie Habershaw regarding concerns with the re-competition of the Federal Flexible Spending Account Program (FSAFEDS) contract. Specifically, the memorandum outlined concerns with how long this contract, a Federal Acquisition Regulation (FAR) contract, has been in place without a single re-competition and the delays we were continuing to see with the current procurement. In addition to Ms. Habershaw, our concerns were also provided to the U.S. Office of Personnel Management's (OPM) Federal Employee Insurance Operations (FEIO) group, and we were assured that our concerns were being addressed. However, as delays have continued to occur with the current procurement, we believe that these concerns have gone unheeded, and we now feel it is necessary to bring these concerns to your attention in the hopes that they will be promptly resolved.

As stated in my previous memorandum, once the Federal Government became responsible for paying the Program's administrative fees on behalf of its enrolled employees on January 1, 2004, the FAR became applicable to the contract. Once the FAR became applicable to the contract, FAR 17.104(a) limited the number of years the contract could continue without being re-competed. Specifically, this clause **limits this type of contract to a five-year period** unless otherwise authorized by statute. To date, this contract has now exceeded a 12-year period, with extensions to the contract's period of performance being granted on four separate occasions, in spite of substantial changes to the Government's program requirements that have occurred during this time.

This concern was relayed to FEIO personnel and was discussed during meetings that occurred during calendar years 2012 and 2013. In late 2013, we were assured by FEIO staff that policies and procedures were in place to ensure that future re-competitions for all programs administered by FEIO would be handled in a timely manner. As part of this discussion, we were provided with a procurement timeline, the first of three timelines, for the current FSAFEDS procurement. The first timeline included a contract award date of June 2014, and a contract effective date of

December 21, 2014, which would have been in line with contract modification 011's extension of the period of performance to December 26, 2014. However, this procurement timeline was subsequently replaced with a second timeline in April 2014. This new timeline included a contract award date of December 18, 2014, and appeared to have the same contract effective date (December 21, 2014) as the first timeline. As stated in my previous memorandum, even if FEIO successfully awarded the new contract on December 18, 2014, because the award date and the new contract's effective date were only days apart, we had serious concerns that the current contract would need to be extended again to allow for an appropriate transition period.

This extension did indeed occur through contract modification 013, which extended the contract's period of performance from December 26, 2014 to December 23, 2015. However, the extension did not occur because the contract award date was too close to the current expiration date to allow for an appropriate transition period. It occurred because the Request for Proposal was not posted to FedBizOps until December 22, 2014, a full five months after the second timeline's target date of July 16, 2014.

A third procurement timeline was provided to our office during a procurement kickoff meeting on February 18, 2015. This current timeline included a contract award date of June 1, 2015, with an intended contract effective date of September 1st. This most recent contract award date is a full year after the initial contract award date included in the first procurement timeline. As has been the history of this procurement, however, the current contract award date has come and gone, yet again, without a contract award, and OPM is quickly approaching the contract's current expiration date.

In our opinion, this procurement has reached a critical stage and future extensions should not even be considered, as the period of performance has already far exceeded the requirements of the FAR. Therefore, we strongly recommend that the needed actions be taken to ensure the new contract is awarded, to include an appropriate transition period, before the current contract's expiration date of December 23, 2015.

Please contact me, at 606-1200, if you have any questions, or someone from your staff may contact Michael R. Esser, Assistant Inspector General for Audits, at [redacted], or [redacted], Chief, Special Audits Group, at [redacted].

Attachment