



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

March 11, 2016

MEMORANDUM TO: James C. Corbett, Director
Acquisition Management Division
Office of Administration

FROM: Craig Erlanger, Acting Director **/RA/ (S. Helton for)**
Division of Fuel Cycle, Safety, Safeguards,
and Environmental Review
Office of Nuclear Material Safety
and Safeguards

SUBJECT: REQUESTED RATIFICATION STATEMENT OF FACTS

The information below addresses the request for relevant information concerning the unauthorized commitment and a complete written statement of facts regarding the Interagency Agreement (IAA) for the Memorandum of Agreement between the Military Surface Deployment and Distribution Command (SDDC) and the U.S. Nuclear Regulatory Commission (NRC) for motor surveillance tracking and monitoring of classified shipments made by certain NRC fuel cycle licensees using the Defense Transportation and Tracking System (DTTS). A ratification is needed because the final option year associated with the IAA was not exercised. This created a gap (October 1, 2014 – May 19, 2015) during which time the DTTS service continued to be provided, invoiced, and reimbursed without an approved IAA in place.

- (1) A statement regarding the nature of the unauthorized procurement action and the individuals involved, including all managers who knew of the action and allowed it to take place.

RESPONSE: IAA NRC-02-10-010 was awarded on April 1, 2010, for one 6-month base period and four 12-month option periods. The IAA expired on September 30, 2014. No action was taken before the expiration of the base year to extend the period of performance. A current IAA, NRC-HQ-50-15-I-0001, involving the same parties and scope of work was awarded on May 20, 2015, with a period of performance thru April 30, 2020.

The Contract Officer Representative (COR) from the Office of Nuclear Material Safety and Safeguards (NMSS), James Downs, understood that IAA NRC-02-10-010 was due to expire on September 30, 2014. On April 7, 2014, to fully fund the IAA for the remainder of fiscal year (FY) 2014 and all of FY 2015, the COR initiated Requisition (REQ) NMSS-14-0043 in the NRC's Strategic Acquisition System (STAQS), to obligate \$55,000 of incremental funding. The requested obligation was determined to exceed the ceiling of \$200,000 for the IAA and the REQ was amended (NMSS-14-0043/000001) to reflect an obligation of \$52,800 to reach the IAA's ceiling. The amended requisition was released to the Acquisition Management Division (AMD)

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for action on April 23, 2014, and fully funded upon confirmation by SDDC on May 6, 2014. At that time, the COR incorrectly believed the final 12-month option period had been exercised to extend the period of performance to September 30, 2015. The COR pursued no further follow-up action.

On January 20, 2016, Larry Cooper, the DTTS Program Manager from SDDC, emailed Sandra Nesmith, a Senior Acquisition Business Specialist in AMD, concerning FY 2016 funding for the current IAA, NRC-HQ-50-15-I-0001. In the process of providing confirmation on incremental funding for FY 2016, it was discovered that a gap (October 1, 2014 – May 19, 2015) existed between expiration of the old IAA, NRC-02-10-010, and award of the current IAA. Not realizing IAA NRC-02-10-010 had expired, SDDC continued to provide the DTTS service to NRC licensees and the COR approved interagency invoices for service performed from October 1, 2014 – May 19, 2015. Interagency invoices approved for DTTS service during this timeframe totaled \$25,242.00.

No NMSS/NSIR management was aware of the issues involving the IAA until SDDC notified NRC of the situation on January 21, 2016.

- (2) A discussion of the program requirements and an explanation of how the unauthorized procurement action occurred, and why it was considered valid and necessary to meet program requirements.

RESPONSE: DTTS provides the capability for satellite monitoring and tracking of sensitive motor shipments of various commodities within the U.S. made by NRC licensees. Pursuant to Executive Order 12958, as amended, the NRC is authorized to establish controls (for its licensees) to ensure classified material is provided adequate protection from unauthorized access or use. The NRC has identified DTTS as an appropriate system that can be used, in conjunction with other measures, to protect classified material during transport. The classified material shipments, while regulated by the NRC, belong to the NRC licensee. A break in service would be detrimental to the security of these classified material shipments.

The COR believed that STAQS REQ NMSS-14-0043/000001 provided incremental funding, exercised the final 12-month option, and extended the period of performance of IAA NRC-02-10-010 to September 30, 2015. However, it was discovered that the REQ only provided incremental funding to the ceiling of the IAA. Therefore, no action was taken before the expiration of the current option year to extend the period of performance.

Not realizing IAA NRC-02-10-010 had expired, SDDC continued to provide the DTTS service to NRC licensees and the COR approved interagency invoices for services performed from October 1, 2014 – May 19, 2015. Interagency invoices approved for DTTS service during this timeframe totaled \$25,242.00. Believing the existing IAA was valid through September 30, 2015, the COR did not submit a requisition to award a follow-on agreement until February 24, 2015. A new IAA was awarded May 20, 2015.

- (3) Explain whether or not competition was sought. Provide an explanation of the initial selection of the proposed contractor (i.e., market research or sole source justification) include names, addresses, phone numbers, and provide quotes received from any other sources that were considered.

RESPONSE: Market research from the origination of IAA NRC-02-10-010 is not available. During origination of the existing IAA, market research information is performed in accordance with Federal Acquisition Regulation (FAR) 7.102 and Part 10. It was determined that the services could not be obtained as conveniently or economically by directly contracting with a private source and that SDDC has unique expertise and capabilities to enter into the assistance agreement not currently available within the NRC. Furthermore, the market research determined that NRC's need could not be met by commercial items, commercial items with customary or minor modifications, or non-developmental items. The NRC entered into the IAA (non-DOE Lab) in accordance with FAR 17.5.

- (4) A statement of any approvals or clearances received for the unauthorized procurement action, including a listing of who told the contractor to proceed and on what date the contractor was so notified.

RESPONSE: The COR believed that STAQS REQ NMSS-14-0043/000001 provided incremental funding, exercised the final 12-month option, and extended the period of performance of IAA NRC-02-10-010 to September 30, 2015. The REQ actually only provided incremental funding to the ceiling of the IAA. No action was taken before the expiration of the current option year to extend the period of performance.

Not realizing IAA NRC-02-10-010 had expired, SDDC continued to provide the DTTS service to NRC licensees and the COR approved interagency invoices for services performed from October 1, 2014 – May 19, 2015. Interagency invoices approved for DTTS service during this timeframe totaled \$25,242.00. Believing the existing IAA was valid through September 30, 2015, NRC did not award a new IAA until May 20, 2015.

SDDC notified NRC of the situation on January 21, 2016.

- (5) A description of the work performed or products furnished, date inspected and accepted, including the date work started for services.

RESPONSE: Work began on IAA NRC-02-10-010 on April 1, 2010, by SDDC providing the DTTS service to NRC licensees. The IAA expired on September 30, 2014. Unknowingly, SDDC continued to provide the DTTS service to NRC licensees and the COR approved interagency invoices for services performed from October 1, 2014 – May 19, 2015. Interagency invoices approved for DTTS service during this timeframe totaled \$25,242.00.

The DTTS provides the capability for satellite monitoring and tracking of sensitive motor shipments of various commodities within the U.S. made by NRC licensees. Pursuant to Executive Order 12958, as amended, the NRC is authorized to establish controls (for its licensees) to ensure classified material is provided adequate protection from unauthorized access or use. The NRC has identified DTTS as an appropriate system that can be used, in conjunction with other measures, to protect classified material during transport. The classified material shipments, while regulated by the NRC, belong to the NRC licensee.

- (6) The estimated or agreed to purchase price and the estimated or agreed to completion date and the date when they were agreed to (include how price or cost reasonableness was evaluated and who agreed to it).

RESPONSE: IAA NRC-02-10-010 had a ceiling of \$200,000.00 and was awarded on April 1, 2010, for one 6-month base period and four 12-month option periods. The IAA expired on September 30, 2014. Unknowingly, SDDC continued to provide the DTTS service to NRC licensees and the COR approved interagency invoices for services performed from October 1, 2014 – May 19, 2015. Interagency invoices approved for DTTS service during this timeframe totaled \$25,242.00. Terms of quarterly fees for the DTTS service were clearly described within the IAA, Section 4(f), which stated, “The flat fee of \$5,000 will be charged for the first 100 shipments and \$75 for each shipment thereafter.”

(7) A copy of the most current invoice, if any.

RESPONSE: Attached are copies of the approved interagency invoices for services performed from October 1, 2014 – May 19, 2015. Interagency invoices approved for DTTS service during this timeframe totaled \$25,242.00.

(8) A description of what has been done to prevent recurrence, including any disciplinary action taken against parties involved.

RESPONSE: For existing contracts, the NMSS/FCSE Technical Assistant will remind CORs of the methods available to confirm their periods of performance (POP). However, CORs have expressed difficulty in monitoring POP, especially for those contracts that were passed on from a previous COR that may not have complete documentation. No disciplinary action has been taken against the involved parties.

(9) A description of any attempts made to involve properly authorized procurement personnel before any commitment was made to the contractor (include any factors which prevented such involvement).

RESPONSE: Properly authorized procurement personnel were engaged throughout the award process of the current IAA. Properly authorized procurement personnel were engaged when SDDC notified NRC of the situation on January 21, 2016.

(10) Provide a statement addressing whether or not funds were available at the time of commitment and whether or not they are still available to date.

RESPONSE: Funds for IAA NRC-02-10-010 were available when interagency invoices were approved for services performed from October 1, 2014 – May 19, 2015. Interagency invoices approved for DTTS service during this timeframe totaled \$25,242.00. No funds are currently available for IAA NRC-02-10-010. Funds are available for the current IAA NRC-HQ-50-15-I-0001.

(11) Any other pertinent information regarding the unauthorized procurement action or the ratification request.

RESPONSE: No other pertinent information is available.

J. Corbett

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If you have any questions, please contact James Downs at 301-415-7744, or via e-mail to James.Downs@nrc.gov.

Enclosure:
Approved Interagency Invoices

J. Corbett

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OFFICE	FCSE/ECB	FCSE/ECB	FCSE/ECB	FCSE
NAME	JDowns	TBrockington	TGrice	CErlanger
DATE	02/29/16	02/29/16	03/01/16	03/11/16

OFFICIAL RECORD COPY

Copy of the approved interagency invoices for services performed from
October 1, 2014 – May 19, 2015

Enclosure