



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

**MANAGEMENT ADVISORY
ISSUES IDENTIFIED DURING OUR
COMPLIANCE AUDIT OF
KANE COMMUNICATIONS, LLC, ON
CONTRACT No. P15PC00612 WITH
NATIONAL PARK SERVICE**

This is a revised version of the report prepared for public release.



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Memorandum

MAR 31 2017

To: Michael T. Reynolds
Acting Director, National Park Service

From: Chris Stubbs *Chris Stubbs*
Director, Office of Financial and Contract Audits

Subject: Management Advisory – Issues Identified During Our Compliance Audit of Kane Communications, LLC, on Contract No. P15PC00612 with National Park Service Report No. 2016-CG-033-A

The Office of Inspector General (OIG) has completed a compliance audit of Kane Communications, LLC (Kane), under Contract No. P15PC00612 with the National Park Service (NPS). NPS issued this contract on June 12, 2015, to replace outside plant telecommunications infrastructure damaged by Hurricane Sandy at work sites at the Sandy Hook Unit at Gateway National Recreation Area (Gateway) in New Jersey, as well as Great Kills and Jacob Riis Parks at Gateway in New York. We examined whether NPS obtained a fair and reasonable price in the contract award and whether it monitored the contract adequately. Since NPS failed to obtain the required cost estimate and failed to document the cost difference between Kane and all other bidders, we could not determine whether it obtained an appropriate price. We also found that NPS did not adequately monitor the contract.

With regard to its documentation of a fair and reasonable price, we found that NPS—

- did not explain the cost difference between Kane’s proposal and the others and
- did not prepare a Class A independent Government cost estimate.

With regard to its contract monitoring, we found that NPS—

- did not ensure that the contract modification’s contract line item numbers (CLINs) matched existing contract CLINs;
- did not ensure that the invoice submitted in the Invoice Processing Platform (IPP) system matched the draft invoice prior to approval;
- did not require Kane to complete the pay estimate form;
- allowed Kane to create new CLINs on invoices without a contract modification; and
- did not properly oversee Kane’s compliance with the Federal Acquisition Regulations’ (FAR) “Limitations on Subcontracting” clause.

We made seven recommendations to NPS to resolve these deficiencies.

NPS Failed to Adequately Document a Fair and Reasonable Price

The NPS Cost Estimating Requirements Handbook (Handbook) outlines the steps NPS must take when designing a project. The final step is to submit all draft construction documents,

including a class A independent Government cost estimate (IGE). An IGE is a current, valid, reliable estimate of the resources and associated market value costs incurred to carry out the contract. NPS recognizes three types of IGE—referred to as classes C, B, and A, respectively—with each class more detailed than the class preceding it. The final, most complete estimate, the class A IGE, is completed after the scope of work has been fully defined, when the most accurate estimates have been determined. A class A IGE ensures that the contractual proposals received by the Government come close to what is considered a reasonable cost estimate for such a contract.

NPS Did Not Explain the Cost Difference Between Kane's Proposal and the Others

Kane's bid on the NPS contract was 9 percent below the class B IGE. The other offers ranged between [REDACTED] percent and [REDACTED] percent above the IGE. Thus, a 55 percent price variance existed between Kane's proposal and the next lowest bid. NPS failed to explain the large price difference, making it unclear whether Kane's price was reasonable based on competition.

According to NPS's source selection determination, Kane's proposed pricing was the lowest received. At no time does this determination explain why the other contractor's prices were significantly higher. Title 48, Code of Federal Regulations (C.F.R.), Section 15.406-3(8) states that NPS is required to document in the contract file "the most significant facts or considerations controlling the establishment of the pre-negotiation objectives and the negotiated agreement including an explanation of any significant differences between the two positions." NPS should have explained such a significant price variance between the winning proposal and the other proposals, especially since Kane's was the only bid below the class B IGE.

We spoke with Kane's representatives and those from the other bidding companies to find out why the bids from the other companies were so much higher than Kane's. Kane identified using very few subcontractors as the reason for the price difference. The other companies had various responses, such as Kane paying its laborers less or Kane specializing in the work being performed and so not needing as many subcontractors. We know, however, that Kane [REDACTED]. We also know that two other specialty contractors bid on the project, yet those bids were still at least 55 percent more than Kane's. As a result, we were unable to determine the rationale for the large price difference among the bids.

We recommend that NPS document in the contract file the reasons for the disparity among the contract bids.

NPS Did Not Prepare a Class A Independent Government Cost Estimate, Inhibiting the Government from Making a Fully Informed Decision

NPS did not prepare a class A IGE for this project as required by the Handbook. FAR 36.203(a) also requires that the Government entity prepare an estimate "in as much detail as though the Government were competing for award." We believe that the class A IGE most closely matches the FAR's requirement. Because of NPS's failure to prepare a class A estimate, we were unable to determine if NPS obtained a fair and reasonable price.

NPS stated that its completion of the class B IGE (which occurs before the scope of work is finished) was sufficient, thus saving the expense of completing the class A IGE. The NPS contracting officer stated that NPS does not have to abide by the Handbook, stating rather that it is for project management officials and not contracting officials. While the Office of Acquisition and Property Management concurred that its office has no issued guidance on IGEs, it did state that the Handbook is a good guide to follow. We feel that class B IGEs are insufficient because NPS has not completely defined the scope of work for the project at that point, leaving the Government unequipped to make a fully informed decision.

NPS further indicated that it was not required to use the IGE to determine a reasonable price because the contract had an adequate number of bidders. According to NPS's price analysis report, NPS did use the IGE to determine price reasonableness. NPS stated that, based on data from the report, the nine percent difference between the class B IGE and Kane's price fell well within the acceptable range. The Handbook considers the price reasonable if it is less than 10 percent below the IGE, which places the Kane proposal at the extreme end of the acceptable range. In addition, if NPS considers only the cost of the portion of Kane's proposal that was exercised and not the cost of the entire proposal, the price falls to 13 percent below the portion of the IGE that was exercised. Because Kane's proposal was so close to the 10 percent threshold and because all other proposals NPS received came in significantly higher than the IGE, we believe that a class A IGE would have increased the value of the contract and made Kane's proposal fall below the acceptable threshold.

We recommend that NPS establish a procedure to obtain class A estimates prior to award as required by the FAR 36.203(a).

NPS Failed to Adequately Monitor its Contract with Kane

NPS Did Not Ensure Modification CLINs Matched Contract CLINs

NPS modified the contract, but categorized the CLINs they activated incorrectly. According to the NPS contracting officer, CLINs assigned to optional work by the contract is not part of the base contract. Those CLINs remain with the option when NPS exercises it in a modification. In the first modification for this contract, NPS partially activated option J to install cables. In the contract, NPS assigned CLIN 19 to option J. When NPS modified the contract to partially exercise option J, they assigned it CLIN 17 instead of maintaining CLIN 19; however, in the contract NPS had already assigned CLIN 17 to option G for work on the ductbank at building 438.

The modification also included an addition for wiring from building 65 to building 26 that was not in the original contract. Instead of assigning it a new CLIN, which would have been CLIN 24, NPS assigned CLIN 16 to the addition. In the contract, NPS had already assigned CLIN 16 to option F for work on manholes.

Both of these mistakes were administrative errors, according to the contracting officer. The mistake was made because CLINs 1 through 15 were the only CLINs activated at the time

and, since NPS did not see that all of the options had already been assigned, CLINs 16 and 17 appeared to be the next CLINs available. If NPS does not correct these errors and if it decides to activate CLINs 16 and 17 on the contract, there will be confusion as it will appear that NPS already activated those CLINS.

We recommend that NPS maintain consistency in CLINs between the contract and modifications when exercising options.

NPS Did Not Ensure the Invoice Submitted in Invoice Processing Platform Matched the Draft Invoice Prior to Approval

NPS did not ensure that the documentation Kane provided in NPS's IPP system (a service that manages Government invoicing) was the same support that Kane provided prior to submitting the invoice. Kane submitted a proper schedule of values (the section that ties what Kane charged to each CLIN on the pay estimate form, explaining why the cost was charged and how the cost was relevant to the CLIN) in the IPP system, but when Kane submitted the invoices into the system, the system converted all files into PDF format, which removed the detailed percentage of completion section on the schedule of values, making this critical section no longer visible. This meant that NPS could no longer see and thus could not access the required percentage of completion section on the detailed schedule of values. Without knowing the percentage of completion for each CLIN, NPS cannot be sure that it properly reimbursed Kane for work performed. Because of the removal of this vital information, the support that is saved in the IPP system is incomplete and unacceptable.

Due to the difficulty of correcting an invoice in IPP, NPS required Kane to send all supporting documentation and a draft copy of the invoice to the contracting officer prior to submitting the invoice to IPP to ensure accuracy. Once NPS was satisfied with the draft invoice and its support, it gave Kane permission to submit the invoice into the IPP system, where the contracting officer's representative and the contracting officer could approve the invoice for payment. NPS did not thoroughly check the support documents attached to the invoice submitted to IPP, however, to ensure that they matched the support that Kane provided with the draft invoice.

We recommend that NPS review invoices before approving them to ensure that all required documents are complete and that the invoices submitted in the IPP system are consistent with the draft invoice.

NPS Did Not Require Kane to Complete the Pay Estimate Form

NPS did not require Kane to complete the percentage of completion section on the pay estimate form as required by the contract. This section ensures that the contractor is charging the contract appropriately. The pay estimate form delineates charges by separating the costs by CLIN, and the contractor is supposed to assign a percentage of completion to each CLIN. Because of this error, the invoice does not accurately reflect the costs per CLIN. Without knowing the percentage of completion for each CLIN, NPS cannot determine if it properly reimbursed Kane for work performed.

When Kane attempted to submit the form with the percentage of completion section, it could not navigate the formulas on the form. NPS told Kane to leave the percentage of completion section blank. Leaving it blank, however, created an incomplete pay estimate, thus violating 48 C.F.R. 52.232-5(b)(1)(i). NPS said that Kane did not need to follow the requirements because the Kane contract is a firm fixed price contract. NPS interprets this to mean that the invoice for such contracts as materially the same information as the schedule of values.

We recommend that NPS require Kane to follow the 48 C.F.R. 52.232-5 requirements and complete the percentage of completion section on the pay estimate form.

NPS Allowed Kane to Create New CLINs Without a Contract Modification

NPS allowed Kane to submit invoices with new CLINs without modifying the contract. Kane removed funding from CLIN 4 on the pay estimate form and schedule of values, then created two new CLINs for costs associated with bonding and with wetlands permits. Kane also created a separate CLIN for modification 1, instead of correctly distributing the funding according to the contract. Because of this, Kane's invoice does not match the contract.

NPS did not correct Kane, even though the CLINs no longer matched the contract and Kane did not follow the contract requirement, which states "if no specific line item exists for a portion of the work, include the costs in a related item." NPS explained it did not hold Kane to the requirements because it considers the invoice of a fixed price contract the same information as the schedule of values.

We recommend that NPS require that Kane generate invoices with CLINs that match the contract.

NPS Did Not Properly Oversee Kane's Compliance with the FAR's "Limitations on Subcontracting" Clause.

NPS did not properly assess the extent of work performed by Kane and its subcontractors to ascertain compliance with the FAR's Limitations on Subcontracting clause (FAR § 52.219-14 (c)(4)). NPS should have confirmed that Kane performed at least 25 percent of the contractor's labor cost for special trade construction, as required by the FAR clause. NPS relied on inaccurate information submitted by Kane (a document entitled "Prime Contractor Certification of Payments to Subcontractors"), which Kane prepared using total costs rather than excluding the cost of materials as required by FAR. Further, the NPS contract officer did not ensure that the subcontracting percentage worksheet was correctly completed, as is required by the Department of the Interior Acquisition Policy Release (DIAPR) 2011-06, to assess Kane's compliance with the subcontracting limitation. NPS argues that the DIAPR does not require Kane to attach the form to all invoices, so NPS is not out of compliance by paying the invoices without the form. Our concern, however, is not whether the form is present, but that the form attached is inaccurate where filled in and incomplete.

We recommend that NPS develop and implement appropriate policies and procedures for contracting officers to prepare and document the subcontracting percentage worksheet provided in DIAPR 2011-06.

Conclusion and Recommendations

We identified seven issues related to NPS' pre-award process and contract monitoring.

We recommend that NPS:

1. Document in the contract file the reasons for the disparity among the contract bids.
2. Establish a procedure to obtain class A estimates prior to awarding a contract as required by the FAR 36.203(a).
3. Maintain consistency in CLINs between the contract and modifications when exercising options.
4. Review invoices before approving them to ensure that all required documents are complete and that the invoices submitted in the IPP system are consistent with the draft invoice.
5. Require Kane to follow 48 C.F.R. 52.232-5 and fill in the percentage of completion section on the pay estimate form.
6. Require that Kane generate invoices with CLINs that match the contract.
7. Develop and implement appropriate policies and procedures for contracting officers to prepare and document the subcontracting percentage worksheet provided in DIAPR 2011-06.

Response to Report

Please provide us with your written response to this management advisory within 30 days. The response should provide information on actions taken or planned to address the recommendations, as well as target dates and title(s) of the official(s) responsible for implementation. Please send your response to aie_reports@doioig.gov.

The legislation creating the Office of Inspector General requires that we report to Congress semiannually on all audit, inspection, and evaluation reports issued; actions taken to implement our recommendations; and recommendations that have not been implemented. Please contact me at 202-208-5745 if you have any questions.

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By Mail: U.S. Department of the Interior
 Office of Inspector General
 Mail Stop 4428 MIB
 1849 C Street, NW.
 Washington, DC 20240