

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**NIH DID NOT CLOSE CONTRACTS
IN ACCORDANCE WITH FEDERAL
REQUIREMENTS, RESULTING IN
THE INCREASED RISK OF
FRAUD, WASTE, AND ABUSE**

*Inquiries about this report may be addressed to the Office of Public Affairs at
Public.Affairs@oig.hhs.gov.*



Amy J. Frontz
Deputy Inspector General
for Audit Services

June 2024
A-04-23-03585

Office of Inspector General

<https://oig.hhs.gov>

The mission of the Office of Inspector General (OIG) is to provide objective oversight to promote the economy, efficiency, effectiveness, and integrity of the Department of Health and Human Services (HHS) programs, as well as the health and welfare of the people they serve. Established by Public Law No. 95-452, as amended, OIG carries out its mission through audits, investigations, and evaluations conducted by the following operating components:

Office of Audit Services. OAS provides auditing services for HHS, either by conducting audits with its own audit resources or by overseeing audit work done by others. The audits examine the performance of HHS programs, funding recipients, and contractors in carrying out their respective responsibilities and provide independent assessments of HHS programs and operations to reduce waste, abuse, and mismanagement.

Office of Evaluation and Inspections. OEI's national evaluations provide HHS, Congress, and the public with timely, useful, and reliable information on significant issues. To promote impact, OEI reports also provide practical recommendations for improving program operations.

Office of Investigations. OI's criminal, civil, and administrative investigations of fraud and misconduct related to HHS programs and operations often lead to criminal convictions, administrative sanctions, and civil monetary penalties. OI's nationwide network of investigators collaborates with the Department of Justice and other Federal, State, and local law enforcement authorities. OI works with public health entities to minimize adverse patient impacts following enforcement operations. OI also provides security and protection for the Secretary and other senior HHS officials.

Office of Counsel to the Inspector General. OCIG provides legal advice to OIG on HHS programs and OIG's internal operations. The law office also imposes exclusions and civil monetary penalties, monitors Corporate Integrity Agreements, and represents HHS's interests in False Claims Act cases. In addition, OCIG publishes advisory opinions, compliance program guidance documents, fraud alerts, and other resources regarding compliance considerations, the anti-kickback statute, and other OIG enforcement authorities.

Notices

THIS REPORT IS AVAILABLE TO THE PUBLIC
at <https://oig.hhs.gov>

Section 8M of the Inspector General Act, 5 U.S.C. App., requires that OIG post its publicly available reports on the OIG website.

OFFICE OF AUDIT SERVICES FINDINGS AND OPINIONS

The designation of financial or management practices as questionable, a recommendation for the disallowance of costs incurred or claimed, and any other conclusions and recommendations in this report represent the findings and opinions of OAS. Authorized officials of the HHS operating divisions will make final determination on these matters.

Report in Brief

Date: June 2024

Report No. A-04-23-03585

U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL



Why OIG Did This Audit

HHS relies on contractors to fulfill its mission, and the OIG has identified ensuring the financial integrity of HHS programs, including HHS's oversight of contracts, as a top management challenge for HHS. One longstanding problem has been closing contracts timely and in accordance with Federal requirements. Closing contracts is generally the last chance for the Government to detect and recover improper contract payments. A delayed closeout poses a financial risk to agency funds. This audit is part of a broad portfolio of HHS OIG audits examining various aspects of the National Institutes of Health (NIH) operations.

Our objective was to determine whether NIH closed contracts in accordance with Federal regulations and HHS policies and procedures.

How OIG Did This Audit

We reviewed 30 judgmentally selected contracts totaling \$2.1 billion with end dates of September 30, 2018, or earlier. For each of these 30 contracts, we reviewed NIH's contract documents, including but not limited to contract awards, modifications, contracting officer representative certifications, contractor closing statements, and payments. We reviewed NIH's policies and procedures related to managing Federal records, contract administration, and contract closeout. We also conducted interviews with NIH officials responsible for contract closeout.

NIH Did Not Close Contracts in Accordance With Federal Requirements, Resulting in the Increased Risk of Fraud, Waste, and Abuse

What OIG Found

NIH did not always close contracts in accordance with Federal regulations and HHS policies and procedures. Of the 30 judgmentally selected contracts totaling \$2.1 billion that we reviewed, NIH met all administrative closeout requirements for 1 contract totaling \$140 million. However, for the remaining 29 contracts, totaling more than \$1.9 billion, NIH did not meet one or more administrative closeout requirements. Administrative closeout requirements include but are not limited to the following: (1) performing a contract audit, (2) obtaining a contractor closing statement, and (3) performing a contract funds review.

NIH did not always close contracts in accordance with administrative closeout requirements because it did not have adequate internal controls including: (1) policies and procedures for meeting administrative closeout requirements from the Federal Acquisition Regulations and HHS Contract Closeout Directive, (2) policies and procedures for maintaining complete and accurate contract records, and (3) control activities for monitoring the performance of contracting personnel's compliance with administrative closeout requirements.

What OIG Recommends and NIH Comments

We recommend that NIH: (1) complete the administrative closeout requirements for the 29 contracts totaling more than \$1.9 billion identified in our audit; (2) incorporate, by reference, the administrative closeout requirements from the Federal Acquisition Regulation and HHS Contract Closeout Directive into the *NIH Policy Manual*; (3) update the *NIH Policy Manual* to address the migration of contract file records to new contract management systems, the preservation of all contract file records when employees depart the agency, and the prevention of contract records from being destroyed before contract closeout has occurred; and (4) establish control activities for monitoring the performance of contract personnel's compliance with administrative closeout requirements.

In written comments on our draft report, NIH concurred with our recommendations. NIH stated that it will implement our first and second recommendations by December 2024 and third and fourth recommendations by June 2025.

TABLE OF CONTENTS

INTRODUCTION.....	1
Why We Did This Audit.....	1
Objective.....	1
Background.....	1
The National Institutes of Health.....	1
Federal Requirements.....	2
NIH’s Contract Closeout Responsibilities.....	3
How We Conducted This Audit.....	3
FINDINGS.....	4
NIH Did Not Close Contracts in Accordance With Administrative Closeout Requirements.....	5
NIH Did Not Obtain Signed COR Certifications.....	5
NIH Did Not Conduct Desk Reviews or Ensure Contract Audits Were Performed.....	6
NIH Did Not Obtain Contractors’ Closing Statements.....	7
NIH Did Not Complete Contract Funds Reviews and Deobligate Any Excess Funding.....	8
NIH Did Not Have Adequate Internal Controls for Contract Closeout.....	8
NIH Put Contract Funds at Risk for Fraud, Waste, and Abuse.....	10
RECOMMENDATIONS.....	10
NIH COMMENTS.....	10
APPENDICES	
A: Audit Scope and Methodology.....	11
B: Federal Requirements.....	13
C: Total Contract Errors by Administrative Closeout Requirement.....	18
D: NIH Comments.....	19

INTRODUCTION

WHY WE DID THIS AUDIT

The Department of Health and Human Services (HHS) relies on contractors to fulfill its mission, and the Office of Inspector General (OIG) has identified ensuring the financial integrity of HHS programs, including HHS's oversight of contracts, as a top management challenge for HHS. One longstanding problem across the Federal Government has been closing out contracts timely and in accordance with Federal requirements. For example, a 2017 Government Accountability Office report identified issues with contract closeout timeliness at several agencies, including HHS.¹ In addition, a recent OIG audit of the Food and Drug Administration's contract closeout processes found that it did not always identify contracts eligible for closeout and did not always follow the Federal Acquisition Regulation (FAR) requirements for closing contracts timely.² The closeout process is an important internal control in the contract lifecycle, because it is generally the last opportunity for the Government to detect and recover improper payments.³ Also, a delayed closeout poses a financial risk to agency funds. The Consolidated Appropriations Act, 2023 (Public Law No. 117-328), provided OIG with funds to conduct oversight of the National Institutes of Health's (NIH's) programs and operations. This audit is part of a broad portfolio of HHS OIG audits examining various aspects of NIH operations.

OBJECTIVE

Our objective was to determine whether NIH closed contracts in accordance with Federal regulations and HHS policies and procedures.

BACKGROUND

The National Institutes of Health

NIH's mission is to seek fundamental knowledge about the nature and behavior of living systems and the application of that knowledge to enhance health, lengthen life, and reduce illness and disability. NIH is the largest biomedical research agency in the world and is made up of 27 different institutes and centers.

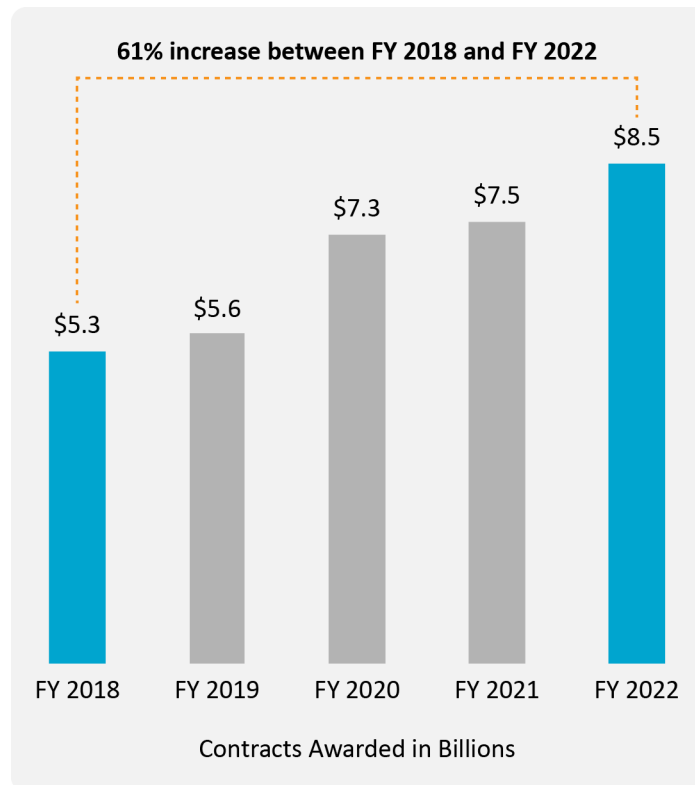
¹ Government Accountability Office, Federal Contracting: Additional Management Attention and Action Needed to Close Contracts and Reduce Audit Backlog (GAO-17-738). Available online at <https://www.gao.gov/assets/gao-17-738.pdf>. Accessed on Jan. 30, 2024.

² *The Food and Drug Administration Needs To Improve Its Contract Closeout Processes To Identify Contracts Eligible For Closeout and Close Contracts Timely* (A-03-20-03004), issued on Dec. 16, 2021.

³ The contract lifecycle begins when an agency identifies a need for products or services and ends when the contractor has fulfilled its contractual obligations and all administrative closeout requirements are met, including the following: (1) performing a contract audit, (2) obtaining a contractor closing statement, and (3) performing a contract funds review and deobligating any excess funding (48 CFR § 4.804-5).

As one of the largest contracting agencies in the Federal Government, HHS awarded contracts totaling almost \$39 billion in fiscal year (FY) 2022. NIH was responsible for awarding \$8.5 billion, or approximately 22 percent of those contracts. This was an increase of approximately 61 percent in the annual amount of NIH contracts from FY 2018, as shown in the figure below. From FY 2018 through FY 2022, NIH awarded more than \$34.2 billion in contracts.

Figure: Annual Amount of NIH Contracts



Source: USASPENDING.gov, accessed on January 10, 2024.

Federal Requirements

The FAR is the primary regulation that all executive branch agencies must follow when acquiring goods and services.⁴ It establishes the administrative requirements, including time standards, for closing contract files.^{5, 6} Federal agencies are required to begin the closeout

⁴ 48 CFR § 1.101.

⁵ 48 CFR § 4.804-5.

⁶ Except for contracts awarded under the simplified acquisition procedures, closeout time standards range from 6 months for fixed-price contracts to 36 months for cost reimbursement contracts (48 CFR § 4.804-1).

process once a contract is physically completed.⁷ A contract is physically completed when the contract has ended, and the contractor has satisfactorily provided the delivered goods or services.⁸

The HHS Contract Closeout Directive (HHSCCD) prescribes the procedures that HHS agencies must use for closing out contracts in accordance with the FAR.⁹

Appendix B contains the Federal requirements referenced in this report.

NIH's Contract Closeout Responsibilities

NIH's Office of Acquisition and Logistics Management (OALM) provides acquisition guidance and oversight to NIH's institutes and centers and works in conjunction with the NIH acquisition community. OALM's mission is to provide acquisition, logistics, and business services and products that support NIH's mission in a manner that preserves the public trust.

NIH acquisition offices provide guidance and assistance to NIH program staff within its 27 institutes and centers. The acquisition offices assist with NIH's procurement of supplies and services throughout the contracting lifecycle to include closing out contracts in accordance with Federal regulations and HHS policies and procedures.

Within the acquisition offices, contracting officers are individuals with the authority to enter into, administer, and close out contracts. Contracting officers are responsible for overseeing the entire contract closeout process and must ensure that all required administrative actions have been satisfactorily completed. At the end of a contract's lifecycle, the contracting officer must follow the applicable administrative closeout procedures to close out the contract.

HOW WE CONDUCTED THIS AUDIT

Our audit covered NIH's administrative closeout activities between October 1, 2017, and September 30, 2022 (audit period), for those contracts eligible for closeout by September 30, 2018.¹⁰ This included 16,992 contracts overdue for closeout totaling \$5.9 billion and 12,203 closed contracts totaling \$6.8 billion.

⁷ 48 CFR § 4.804-5(a).

⁸ 48 CFR § 4.804-4(a).

⁹ HHSCCD, chapter 1 § A.

¹⁰ Because the closeout timeframes in our sample range from 6 months to 36 months, using a contract end date of Sept. 30, 2018, or earlier allows for an adequate amount of time (at least 36 months) for the contract closeout to have occurred.

We reviewed a judgmental sample of 30 contracts totaling \$2.1 billion.¹¹ These contracts included 25 contracts overdue for closeout totaling \$1.4 billion and 5 closed contracts totaling \$700 million and consisted of 21 cost-reimbursement contracts,¹² 6 fixed-price contracts,¹³ and 3 time-and-materials contracts.^{14, 15}

We conducted this performance 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.

Appendix A describes our audit scope and methodology.

FINDINGS

NIH did not always close contracts in accordance with Federal regulations and HHS policies and procedures (administrative closeout requirements).¹⁶ Of the 30 judgmentally selected contracts totaling \$2.1 billion that we reviewed, NIH met all administrative closeout requirements for 1 contract totaling \$140 million. However, for the remaining 29 contracts, totaling more than \$1.9 billion, NIH did not meet one or more administrative closeout requirements.¹⁷

NIH did not always close contracts in accordance with administrative closeout requirements because it did not have adequate internal controls, including: (1) policies and procedures for meeting administrative closeout requirements from the FAR and HHSCCD, (2) policies and

¹¹ The judgmental sample of 30 contracts totaled \$2,052,447,738.

¹² A cost-reimbursement contract is a contract under which a contractor is reimbursed for allowable costs incurred during the performance of the contract.

¹³ A fixed-price contract establishes a firm price for goods or services to be provided. This means that the agreed price remains constant, regardless of the contractor's actual costs or resources required to perform the work.

¹⁴ A time-and-materials contract provides for acquiring supplies or services based on direct labor hours at specified fixed rates that include wages, overhead, general and administrative expenses, profit, and actual cost for materials without any fees. In general, the HHSCCD applies cost reimbursement administrative closeout requirements to these contracts.

¹⁵ We focused our sample selection on high-dollar value contracts. Specifically, we reviewed all contracts overdue for closeout with obligations of \$25 million or more and all closed contracts with obligations exceeding \$100 million.

¹⁶ Throughout this audit report, we refer to "Federal regulations and HHS policies and procedures" as administrative closeout requirements.

¹⁷ Of these 29 contracts, 4 had been closed out by the end of the audit period and 25 were still open.

procedures for maintaining complete and accurate contract records, and (3) control activities for monitoring the performance of contracting personnel's compliance with administrative closeout requirements.

By not complying with administrative closeout requirements, NIH put more than \$1.9 billion of contract funds at risk of fraud, waste, and abuse. In addition, had NIH performed contract funds reviews as required, it could have potentially redirected excess funds, totaling \$18 million, to other project needs.

NIH DID NOT CLOSE CONTRACTS IN ACCORDANCE WITH ADMINISTRATIVE CLOSEOUT REQUIREMENTS

For 29 of the 30 contracts in our sample, NIH did not meet one or more administrative closeout requirements, including the following key requirements: (1) obtaining a signed contracting officer representative's (COR) certification, (2) conducting a desk review or otherwise ensuring that a contract audit was performed, (3) obtaining a contractor closing statement, and (4) performing a contract funds review and deobligating any excess funding.¹⁸

Appendix C provides the total contract errors associated with all of the administrative closeout requirements.

NIH Did Not Obtain Signed COR Certifications

The HHSCCD requires that NIH document physical contract completion by obtaining a written certification signed by the COR attesting that all property or services have been received, were technically acceptable, and were in accordance with the contract terms and conditions. The contracting officer must obtain the COR certification within 29 or 44 days after the contract's end date, depending on whether the contract falls under simplified or standard closeout procedures.¹⁹

Of the 30 contracts we reviewed, contracting officers did not obtain signed COR certifications for 19 contracts in our sample. Specifically:

- For 15 contracts, NIH confirmed that contracting officers had not obtained signed COR certifications.

¹⁸ Although there are other requirements that must be completed prior to closeout, we considered these to be key requirements because they address significant administrative actions, including: (1) making final assessments of whether NIH had received the goods or services it paid for, (2) taking actions to detect and recover improper contract payments and settle final costs, and (3) performing contract funds reviews to identify any excess funding for deobligation.

¹⁹ HHSCCD, chapter 3 §§ A.1 and B.1.

- For three contracts, NIH could not provide us with signed copies of COR certifications because the contract records were lost or destroyed. For example, for one contract, NIH told us that it had destroyed the contract records in accordance with applicable record retention policies. However, it could not provide us with the date of record destruction nor the name of the responsible records custodian.
- For one contract, NIH stated that the contract did not require a signed COR certification because of the contract type; however, COR certifications were required for all contract types.

As of September 30, 2022, the signed COR certifications were between 4 and 9 years late, with an average of 6 years late. Because contracting officers did not always obtain COR certifications, NIH had no assurance that it received the goods or services for contracts totaling over \$1.2 billion.

NIH Did Not Conduct Desk Reviews or Ensure Contract Audits Were Performed

The HHSCCD requires that the contracting officer perform a desk review or request that the cognizant audit agency perform an audit before closeout.^{20, 21, 22} The HHSCCD states that a desk review requires the contracting officer analyze costs billed to the contract for allowability, and a contract audit requires the cognizant audit agency review costs billed to the contract for allowability and reasonableness.

Of the 22 contracts in our sample requiring that the contracting officer conduct either a desk review or ensure a contract audit was performed, NIH provided support that a contract audit was performed for 1 contract. For the remaining 21 contracts, NIH could not support that audits or desk reviews were performed. Specifically:

- For 15 contracts, NIH confirmed that the contracting officer had not conducted a desk review or ensured a contract audit was performed.
- For four contracts, NIH could not provide us with any documentation from the contract files supporting that the contracting officer conducted a desk review or ensured a contract audit was performed. For example, for one contract, NIH told us it could not

²⁰ HHSCCD, chapter 3 § C.3.

²¹ The cognizant audit agency is the federal agency designated to carry out audit responsibilities for a specific contractor.

²² The HHSCCD does not require contracting officers to conduct desk reviews or ensure that contract audits are performed for certain contract types such as Governmentwide Acquisition Contracts (GWAC) for commercial items equal to or less than \$7.5 million. GWAC means a task-order or deliver-order contract for information technology established by one agency for Governmentwide use. Commercial items include various goods and services that are commonly bought and sold to the general public.

“confirm or deny” whether any of the closeout requirements were met because the records were not available and the contracting officer responsible for closeout had left NIH. NIH also told us that the closeout of this contract occurred at a time when NIH was converting files from paper to electronic suggesting this may have contributed to the missing records.

- For two contracts, NIH provided insufficient documentation supporting that the contracting officer conducted a desk review or ensured a contract audit was performed. For one contract, the only evidence NIH could provide was a copy of the contracting officer’s completion statement certifying that they completed a desk review with a signature date after the start of our audit. For the other contract, NIH provided us only with a system-generated closeout report stating that a final audit had been performed before closing out the contract. Neither of these documents was sufficient to support that NIH had met the contract audit requirement.

As a result of NIH’s failure to ensure that contract audits or desk reviews were performed, as applicable, NIH increased its risk for not detecting and recovering improper contract payments.

NIH Did Not Obtain Contractors’ Closing Statements

The HHSCCD requires that contracting officers obtain signed contractors’ closing statements releasing the Government from all liabilities, obligations, claims, or demands.^{23, 24}

Of the 26 contracts in our sample requiring a signed closing statement, contracting officers did not obtain them for 21 contracts. Specifically:

- For 16 contracts, NIH confirmed that contracting officers did not obtain signed contractors’ closing statements.
- For three contracts, NIH could not provide us with signed copies of the contractors’ closing statements because these records could not be located within the contract file.
- For two contracts, NIH stated that signed contractors’ closing statements were not required; however, we found that the HHSCCD did require contractors’ closing statements for these contracts.

²³ HHSCCD, chapter 3 § B.11.

²⁴ The HHSCCD does not require signed contractors’ closing statements for certain contract types such as fixed-price contracts equal to or less than the Simplified Acquisition Threshold (SAT). The SAT is the maximum dollar amount at or below the amount that government agencies can make purchases using simplified acquisition procedures. Simplified acquisition procedures are designed to streamline and expedite the acquisition process for relatively low-dollar-value procurements. During the audit period, the SAT increased from \$150,000 to \$250,000.

Without contractors' closing statements, NIH is not fully protected from potential future claims and legal issues that may arise from not settling final contract costs with the contractor.

NIH Did Not Complete Contract Funds Reviews and Deobligate Any Excess Funding

The HHSCCD requires that the contracting officer review contracts to identify and remove funds in excess of those that will likely be needed for final payment, referred to as contract funds reviews.^{25, 26}

The HHSCCD requires that contracting officers perform contract funds reviews within 30 days after a contract's physical completion. It also states that contracting officers should compare expenditures on physically completed contracts against funded amounts to determine whether deobligating excess funds is feasible.²⁷ If any excess funds remain, the contracting officer, working with the contractor, must estimate the total government monetary liability under the contract.

Of the 26 contracts in our sample that required a contract funds review, NIH did not meet this requirement for 25 contracts. Specifically for 13 contracts, NIH could not provide supporting documentation from the contract file that the contracting officer compared expenditures for completed contracts against funded amounts to determine whether deobligating excess funds was feasible. For the remaining 12 contracts, NIH confirmed that the contracting officer had not completed this requirement. If NIH had performed contract funds reviews after the contracts' physical completion, it would have potentially redirected excess funds, totaling \$18 million, to other project needs.

NIH DID NOT HAVE ADEQUATE INTERNAL CONTROLS FOR CONTRACT CLOSEOUT

NIH did not always close out contracts in accordance with administrative closeout requirements or support that it met these requirements because it did not have adequate internal controls including the following: (1) policies and procedures for meeting administrative closeout requirements from the FAR and HHSCCD, (2) policies and procedures for maintaining complete and accurate contract records, and (3) control activities for monitoring the performance of contracting personnel's compliance with administrative closeout requirements. The

²⁵ HHSCCD, chapter 3 § C.5.

²⁶ For some contracts, such as fixed-price contracts under the General Services Administration (GSA) Federal Supply Schedule (FSS) program, the HHSCCD does not require contracting officers to complete a funds review. The GSA FSS program streamlines the procurement process for Federal agencies by pre-negotiating terms and conditions with commercial vendors.

²⁷ For example, the contracting officer should compare expenditures on physically completed contracts (using payment logs, payment listings from the finance office, or other means) against their face value to determine whether deobligating excess funds is feasible.

Government Accountability Office's *Standards for Internal Control in the Federal Government* (the Green Book) sets the internal control standards for Federal entities.²⁸ Specifically, the Green Book states that designing appropriate types of control activities helps management fulfill its responsibilities.²⁹ In addition, the Green Book asserts that management should document each unit's responsibilities for an operational process within policies.³⁰ Finally, it states that management compares actual performance to planned or expected results and analyzes significant differences in order to fulfill its responsibilities.³¹

The NIH Policy Manual is NIH's official mechanism for issuing NIH-wide policy and provides NIH staff with a central location to easily find NIH-wide policy. The manual is comprised of individual chapters and communicates essential requirements and mandatory procedures with which NIH personnel must comply.³² We found that NIH had not incorporated any of the administrative closeout requirements from the FAR or the HHSCCD into its policy manual.

In addition, NIH did not have adequate policies and procedures for maintaining complete and accurate contract records. Although NIH had general policies and procedures for creating, maintaining, and disposing of Federal records, its policies and procedures did not specifically address the following: (1) the migration of contract file records to a new contract management system, (2) the preservation of all contract file records when employees depart the agency, and (3) the prevention of contract records from being destroyed before contract closeout has occurred.³³

Finally, NIH did not have effective controls for monitoring contract personnel's compliance with administrative closeout requirements. NIH officials initially stated that inadequate staffing resources and a large backlog of contracts overdue for closeout prevented it from meeting closeout requirements with respect to the errors we identified. However, NIH could not provide any analysis of its staffing levels or staffing needs to support this assertion. During our final meeting with NIH officials, they stated that the contracting officer and the COR conduct many activities through the lifecycle of the contract, such as monitoring payments and work performed under the contract to ensure costs are tracked. NIH officials said that the lack of contract closeout activities likely has to do with the contracting officers' lack of awareness of closeout requirements. In addition, they said that emphasis is placed on awarding and managing the contract. They said closing contracts was a lower priority.

²⁸ Green Book, September 2014 edition.

²⁹ Green Book, Principle 10.02.

³⁰ Green Book, Principle 12.03.

³¹ Green Book, Principle 10.03.

³² *NIH Policy Manual*, chapter 1710, Publishing and Maintaining Policies in the *NIH Policy Manual*.

³³ *NIH Policy Manual*, chapter 1743, Managing Federal Records.

NIH PUT CONTRACT FUNDS AT RISK FOR FRAUD, WASTE, AND ABUSE

NIH put more than \$1.9 billion of contract funds at risk of fraud, waste, and abuse because it did not: (1) make final assessments of whether it had received the goods or services it paid for and (2) take sufficient actions to detect and recover improper contract payments and settle final contract costs. In addition, had NIH performed contract funds reviews as required, it could have potentially redirected excess funds, totaling \$18 million, to other project needs.

RECOMMENDATIONS

We recommend that the National Institutes of Health:

- complete the administrative closeout requirements for the 29 contracts totaling more than \$1.9 billion identified in our audit;
- incorporate, by reference, the administrative closeout requirements from the FAR and HHSCCD into the *NIH Policy Manual*;
- update the *NIH Policy Manual* to address:
 - migration of contract file records to new contract management systems,
 - preservation of all contract file records when employees depart the agency, and
 - prevention of contract records from being destroyed before contract closeout has occurred; and
- establish control activities for monitoring the performance of contract personnel's compliance with administrative closeout requirements.

NIH COMMENTS

In written comments on our draft report, NIH concurred with our recommendations. NIH stated that it will implement our first and second recommendations by December 2024 and our third recommendation by June 2025. Regarding our fourth recommendation, NIH stated that OALM will revise its reporting process to include a follow-up component that will enhance accountability related to monitoring across the acquisition community. NIH anticipates this will be completed by June 2025. NIH also provided technical comments on our draft report which were incorporated into this report. NIH's comments, excluding the technical comments, are included as Appendix D.

APPENDIX A: AUDIT SCOPE AND METHODOLOGY

SCOPE

Our audit covered NIH's administrative closeout activities between October 1, 2017, and September 30, 2022, for those contracts eligible for closeout by September 30, 2018. This included 16,992 contracts overdue for closeout totaling \$5.9 billion and 12,203 closed contracts totaling \$6.8 billion with a period of performance end date on or before September 30, 2018.

We reviewed a judgmental sample of 30 contracts totaling \$2.1 billion and with end dates of September 30, 2018, or earlier that either: (1) had total obligations of \$25 million or more and were not closed or (2) had total obligations exceeding \$100 million and were closed during the audit period. We evaluated these contracts for compliance with the FAR and HHSCCD.

We did not assess NIH's overall internal controls. Rather, we limited our review of internal controls to those applicable to our audit objective. Specifically, we assessed the policies, procedures, and practices applicable to NIH's contract closeout process.

METHODOLOGY

To accomplish our audit objective, we took the following steps:

- reviewed applicable Federal regulations and HHS policies and procedures;
- reviewed NIH's contract policies and procedures related to managing Federal records, contract administration, and contract closeout;
- assessed the risk of NIH not closing out contracts timely and in accordance with Federal regulations;
- reviewed the USAspending.gov contract data and compared it to contract data sets provided by NIH for accuracy and completeness;³⁴
- created a sampling frame of contracts eligible for closeout by September 30, 2018, which included 16,992 contracts overdue for closeout totaling \$5.9 billion and 12,203 closed contracts totaling \$6.8 billion;
- selected for review a judgmental sample of 30 contracts totaling \$2.1 billion from the sampling frame which included 25 contracts overdue for closeout totaling \$1.4 billion and 5 closed contracts totaling \$700 million;

³⁴ NIH told us that the source of its data was the Federal Procurement Data System-Next Generation (FPDS-NG). FPDS-NG is the Government repository for information on Federal contracts.

- reviewed NIH’s contract documents, including but not limited to contract awards, modifications, COR certifications, contractor closing statements, and payments for the 30 judgmentally selected contracts;
- conducted virtual interviews with NIH officials responsible for contract closeout; and
- discussed the results of our audit with NIH officials.

We conducted this performance 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 the findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

APPENDIX B: FEDERAL REQUIREMENTS

48 CFR § 4.804-1(a)

- (1) Files for contracts using simplified acquisition procedures should be considered closed when the contracting officer received evidence of receipt of property and final payment, unless otherwise specified by agency regulations.
- (2) Files for firm-fixed-price contracts, other than those using simplified acquisition procedures, should be closed within 6 months after the date on which the contracting officer receives evidence of physical completion.
- (3) Files for contracts requiring settlement of indirect cost rates should be closed within 36 months of the month in which the contracting officer receives evidence of physical completion.
- (4) Files for all other contracts should be closed within 20 months of the month in which the contracting officer receives evidence of physical completion.

48 CFR § 4.804-4(a)

[A] contract is considered to be physically completed when –

- (1) (i) The contractor has completed the required deliveries and the Government has inspected and accepted the supplies;
- (ii) The contractor has performed all services and the Government has accepted these services; and
- (iii) All option provisions, if any, have expired;

48 CFR § 4.804-5(a)

The contract administration office is responsible for initiating (automated or manual) administrative closeout of the contract after receiving evidence of its physical completion. . . . When complete, the administrative closeout procedures must ensure that –

- (1) Disposition of classified material is completed;
- (2) Final patent report is cleared;

- (3) Final royalty report is cleared;
- (4) There is no outstanding value engineering change proposal;
- (5) Plan clearance report is received;
- (6) Property clearance is received;
- (7) All interim or disallowed costs are settled;
- (8) Price revision is completed;
- (9) Subcontracts are settled by the prime contractor;
- (10) Prior year indirect cost rates are settled;
- (11) Termination docket is completed;
- (12) Contract audit is completed;
- (13) Contractor's closing statement is completed;
- (14) Contractor's final invoice has been submitted; and
- (15) Contract funds review is completed and excess funds deobligated.

HHS Contract Closeout Directive

Chapter 3 § A.1.

The [contracting officer (CO)] must send a request for evidence of completion of delivery of property or services to the COR or other individual authorized to receive property/services within 15 calendar days after the last date in the award's delivery schedule or performance period completion date.

Within 14 calendar days of the CO request, the COR (or other authorized individual) must provide to the CO a statement in writing (e-mail is sufficient, unless otherwise specified) that all property or services have been received, are technically acceptable, and are in accordance with an order's terms and conditions.

Chapter 3 § B.1.

The CO must send a request for “Contracting Officer’s Representative Certification of Contract Completion” --using the template provided as Attachment 2--to the COR (or other individual authorized to receive property/services) within 30 calendar days after the last date in the award’s delivery schedule or the performance period completion date.

The COR (or other individual authorized to receive property/services) must provide to the CO a statement in writing (e-mail is sufficient, unless otherwise specified) that all property or services have been received, are technically acceptable, and are in accordance with the contract’s terms and conditions. The COR must provide the requested information within 14 calendar days after receipt of the CO request.

Chapter 3 § B.11.

As part of the “Contracting Officer’s Completion/Expiration Letter” (see Paragraph B.4), the CO must request that the contractor provide, at the time a final invoice or completion invoice is submitted, a contractor’s release of claims, which serves as the contractor’s closing statement. See Attachment 3, Enclosure 2, “Contractor’s Release of Claims and/or Assignment of Refunds, Rebates, Credits, and Other Amounts,” for the release template. The release provides, with certain specified exceptions noted therein, that the contractor will not submit further claims once the Government has made final payment. Accordingly, the CO must ensure that the Government and the contractor resolve all open financial issues, such as change orders, claims, and liquidated damages, prior to the contractor’s execution of its release.

Chapter 3, § C.1.

If the CO prepares a desk review, it must be in the form of an electronic spreadsheet which tracks all payments made to the contractor for such cost categories as direct labor, fringe benefits, materials and supplies, travel, other direct costs, and indirect costs. The CO’s desk review must compare and summarize contract funding for each period (or year) of performance against the contractor’s actual expenditures and indicate any differences.

The CO must advise the contractor by letter of the total allowable costs, amount paid by the Government, all cost suspensions, and any amounts due to the contractor or the Government.

If there are questions concerning allowable costs, the CO should notify the contractor beforehand, outlining any costs and their amounts which the CO believes should be disallowed, along with all supporting information. The CO must request the contractor's rationale to support any costs the contractor believes require payment by the Government. The CO must handle any disagreements regarding the allowability of costs in accordance with the Disputes clause of the contract.

Chapter 3 § C.3.

Prior to final payment under a contract, the CO must perform a desk review or request that the cognizant audit agency perform an audit.

[T]he CO normally will perform a desk review and factor in the results of the applicable indirect cost rates that are established by the cognizant agency and the payments made to the contractor as a result of invoices submitted during the entire period of the contract.

In performing a desk review, the CO must ensure that the contractor's employees did not exceed the salary rate limitation, if applicable, provided in the salary rate limitation clause in [HHS Acquisition Regulations] 352.231-70 and [Acquisition Policy Memorandum] 2012-03.

The results of the desk review must indicate whether contract funding and actual expenditures match or whether the contractor owes the Government money or vice-versa.

The CO must perform a desk review, including a review of the contractor's invoices, using an electronic spreadsheet and substantiating materials, or request that the cognizant audit agency conduct an audit. . . . If the CO performs a desk review, it should contain an analysis of the cost categories . . . as well as general and administrative expense and fee.

Typically, in planning for an audit, regardless of how or where it is performed, an auditor will obtain supporting documentation from the contractor of costs incurred, such as labor distribution worksheets, timesheets, and invoices from subcontractors for equipment purchases, for verification. Also, the audit agency will review costs billed for allowability and reasonableness.

Chapter 3, § C.5.

[T]he CO must review contracts to identify and remove funds in excess of those that will likely be needed for final payment within 30 days after a contract's

physical completion. For example, the CO should compare expenditures on physically completed contracts (using payment logs, payment listings from the finance office, or other means) against their face value to determine whether deobligating excess funds is feasible.

If there are excess funds remaining on a contract, the CO, working with the contractor, must estimate the total Government monetary liability under the contract.

APPENDIX C: TOTAL CONTRACT ERRORS BY ADMINISTRATIVE CLOSEOUT REQUIREMENT

Administrative Closeout Requirement	FAR Citation	HHSCCD Citation	Number of Contracts With Error
Contracting officer receives evidence of completion of delivery of property or services	4.804-1(a)(1)	Chapter 3, §§ A.1 and B.1	19
Contracting officer receives evidence of final payment	4.804-1(a)(1)	Chapter 3 §§ A.2 and B.2	25
Disposition of classified material is completed	4.804-5(a)(1)	Chapter 3 § B.3	13
Final patent report is cleared	4.804-5(a)(2)	Chapter 3 § B.4	14
Final royalty report is cleared	4.804-5(a)(3)	Chapter 3 § B.4	14
There is no outstanding value engineering change proposal	4.804-5(a)(4)	Chapter 3 § B.5	11
Plant clearance report is received	4.804-5(a)(5)	Chapter 3 § B.6	12
Property clearance is received	4.804-5(a)(6)	Chapter 3 § B.7	19
All interim or disallowed costs are settled	4.804-5(a)(7)	Chapter 3 § C.1	20
Price revision is completed	4.804-5(a)(8)	Chapter 3 § B.8	23
Subcontracts are settled by the prime contractor	4.804-5(a)(9)	Chapter 3 § B.9	19
Prior-year indirect cost rates are settled	4.804-5(a)(10)	Chapter 3 § C.2	16
Termination docket is completed	4.804-5(a)(11)	Chapter 3 § B.10	8
Contract audit is completed	4.804-5(a)(12)	Chapter 3 § C.3	21
Contractor's closing statement is completed	4.804-5(a)(13)	Chapter 3 § B.11	21
Contractor's final invoice has been submitted	4.804-5(a)(14)	Chapter 3 §§ B.4 and C.4	26
Contract funds review is completed, and excess funds are deobligated	4.804-5(a)(15)	Chapter 3 § C.5	25
Contract completion statement	4.804-5(b)	Chapter 3 § B.12	24

APPENDIX D: NIH COMMENTS



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

National Institutes of Health
Bethesda, Maryland 20892

www.nih.gov

DATE: May 17, 2024

TO: Amy J. Frontz
Deputy Inspector General for Audit Services

FROM: Principal Deputy Director, National Institutes of Health

SUBJECT: NIH Comments on Draft Report, *"NIH Did Not Close Contracts in Accordance With Federal Requirements, Resulting in the Increased Risk of Fraud, Waste, and Abuse"* (A-04-23-03585)

Attached are the National Institutes of Health's (NIH) comments on the draft Office of Inspector General's (OIG) report, *"NIH Did Not Close Contracts in Accordance With Federal Requirements, Resulting in the Increased Risk of Fraud, Waste, and Abuse"* (A-04-23-03585).

NIH appreciates the review conducted by the OIG and the opportunity to provide clarifications on this draft report. If you have questions or concerns, please contact Meredith Stein in the Office of Management Assessment at 301-402-8482.

A handwritten signature in black ink, appearing to read "Lawrence A. Tabak".

Lawrence A. Tabak, D.D.S., Ph.D.

Attachment

APPENDIX D: NIH COMMENTS

GENERAL COMMENTS OF THE NATIONAL INSTITUTES OF HEALTH (NIH) ON THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) OFFICE OF INSPECTOR GENERAL (OIG) DRAFT REPORT ENTITLED: "NIH DID NOT CLOSE CONTRACTS IN ACCORDANCE WITH FEDERAL REQUIREMENTS, RESULTING IN THE INCREASED RISK OF FRAUD, WASTE, AND ABUSE" (A-04-23-03585)

The National Institutes of Health (NIH) appreciates the review conducted by the Office of Inspector General (OIG) and the opportunity to provide clarifications on this draft report. NIH respectfully submits the following general comments.

OIG Recommendation 1:

The National Institutes of Health complete the administrative closeout requirements for the 29 contracts totaling more than \$1.9 billion identified in our audit.

NIH Response:

NIH concurs with OIG's finding and corresponding recommendation that NIH complete the administrative closeout requirements for the 29 contracts sampled during the audit. NIH anticipates completing this action plan by December 2024.

OIG Recommendation 2:

The National Institutes of Health incorporate, by reference, the administrative closeout requirements from the Federal Acquisition Regulation (FAR) and HHS Contract Closeout Directive (HHSCCD) into the *NIH Policy Manual*.

NIH Response:

NIH concurs with OIG's finding and corresponding recommendation that NIH incorporate, by reference, the administrative closeout requirements from FAR and HHSCCD into the NIH Policy Manual Chapter. NIH anticipates the incorporation of the reference being completed by December 2024.

OIG Recommendation 3:

The National Institutes of Health update the *NIH Policy Manual* to address:

- migration of contract file records to new contract management systems,
- preservation of all contract file records when employees depart the agency, and
- prevention of contract records from being destroyed before contract closeout has occurred.

NIH Response:

NIH concurs with OIG's finding and corresponding recommendation and will update the NIH Policy Manual. NIH anticipates updating the NIH Policy Manual by June 2025.

APPENDIX D: NIH COMMENTS

GENERAL COMMENTS OF THE NATIONAL INSTITUTES OF HEALTH (NIH) ON THE DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS) OFFICE OF INSPECTOR GENERAL (OIG) DRAFT REPORT ENTITLED: "NIH DID NOT CLOSE CONTRACTS IN ACCORDANCE WITH FEDERAL REQUIREMENTS, RESULTING IN THE INCREASED RISK OF FRAUD, WASTE, AND ABUSE" (A-04-23-03585)

OIG Recommendation 4:

The National Institutes of Health establish control activities for monitoring the performance of contract personnel's compliance with administrative closeout requirements.

NIH Response:

NIH concurs with OIG's finding and corresponding recommendation that NIH establish control activities for monitoring the performance of contract personnel's compliance with administrative closeout requirements. Currently, the Office of Acquisition and Logistics Management (OALM) generates quarterly reports to monitor contract closeout data across NIH. Management uses the data from the reports to monitor and communicate performance of contract closeout to Institute and Center Executive Officers and their Directors of the Office of Acquisition.

To enhance accountability across the acquisition community, OALM will revise the reporting process to include a follow-up component. NIH anticipates completing this action plan by June 2025.