



August 1, 2019

**MEMORANDUM FOR:** Jeff Bratcher  
Chief Technology and Operations Officer, Performing the  
Executive Functions of the Chief Executive Officer  
First Responder Network Authority

A handwritten signature in black ink that reads "Carol N. Rice".

**FROM:** Carol N. Rice  
Assistant Inspector General for Audit and Evaluation

**SUBJECT:** *Management Alert: FirstNet Management Altered Contract  
Requirements Without Authorization*  
Final Memorandum No. OIG-19-020-M

Attached is a management alert on the increased risk regarding the First Responder Network Authority's (FirstNet's) contract management. Issues regarding this topic came to our attention during fieldwork for another audit. Contract management areas of concern include unauthorized commitments, the addition of contract requirements without prior contract modification, an improperly executed stop order, and the appearance of a personal-services contract.

Consistent with the Inspector General Act of 1978, as amended (IG Act),<sup>1</sup> we are notifying FirstNet leadership of the potential risks that could affect the management of FirstNet's fixed-price contract with AT&T to build, operate, and maintain the Nationwide Public Safety Broadband Network and other contracts.

We are not requesting a formal response to this memorandum. This management alert will be posted to our public website.

If you have any questions or concerns about this memorandum, please contact me at (202) 482-6020 or Chris Rose, Supervisory Auditor, at (202) 482-5558.

Attachment

cc: Edward Parkinson, Executive Director of External Affairs, Performing the Non-Executive  
Functions of the Chief Executive Officer, FirstNet  
Erin Greten, Chief Counsel Officer, FirstNet  
Uzoma Onyeije, Audit Liaison, FirstNet

---

<sup>1</sup> The IG Act establishes that offices of inspectors general will "provide a means for keeping the head of the establishment and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action[.]" 5 U.S.C. App., § 2(3).



# Management Alert

## FirstNet Management Altered Contract Requirements Without Authorization

August 1, 2019

Final Memorandum No. OIG-19-020-M

### Key Issue

Only the contracting officer (CO) has the authority to bind the government to agreements or make changes to existing agreements or contracts. However, it came to our attention that unauthorized First Responder Network Authority (FirstNet) managers added requirements to, and increased the cost of, the Nationwide Public Safety Broadband Network (NPSBN) contract without consulting the CO and the contracting officer's representative (COR). The additional requirements were not part of the original scope of work, and modifications were required to authorize informal agreements or work already in progress. The additional requirements were not authorized or funded before the contractor was directed to perform the work. We believe that management attention is warranted to guard against future problems.

### Proposed Actions for Change

The Chief Executive Officer should promptly (a) issue a memorandum to FirstNet staff regarding the important role of the CO and COR and (b) direct acquisition personnel not to authorize additional work on contracts until the work is approved by the CO and properly funded. Additionally, the Chief Procurement Officer, with the support of the Chief Executive Officer, should provide training to FirstNet personnel regarding contracting authority.

### Background

The Middle Class Tax Relief and Job Creation Act of 2012 (the Act) established FirstNet as an independent authority within the National Telecommunications and Information Administration with the expressed responsibility for establishing the NPSBN.<sup>2</sup> The Act also gives FirstNet authority to take whatever actions necessary to establish the NPSBN, including the ability to enter into a public-private contracting relationship.<sup>3</sup>

In March 2017, the U.S. Department of the Interior (DOI),<sup>4</sup> on FirstNet's behalf, signed a 25-year contract worth \$6.5 billion with AT&T (NPSBN contractor) to build, operate, and manage the NPSBN. DOI transferred the management of the contract to FirstNet in December 2017. FirstNet has also entered into a time and materials contract with a support contractor. The contract procured assistance from the support contractor for support services in relation to the NPSBN contract. Only the CO is authorized to

<sup>2</sup> *Middle Class Tax Relief and Job Creation Act of 2012*, Pub. L. No. 112-96, §§ 6204(a), 6206(b).

<sup>3</sup> *Id.* at § 6206(b)(4)(A).

<sup>4</sup> FirstNet entered into an interagency agreement with the DOI for acquisition services.

enter into, modify, or terminate the NPSBN contract. The COR is responsible for technical monitoring of the contract and assessing contractor performance.<sup>5</sup>

Our office has previously identified inappropriate procurement practices. In our December 5, 2014, report,<sup>6</sup> we noted FirstNet's inappropriate influence over the hiring of contract personnel. The report states that FirstNet inappropriately directed a contractor to hire preselected subject matter experts.

## Our Observations to Date

It came to our attention that unauthorized FirstNet management personnel added requirements not included in the contracts without the knowledge of the COR and without the approval of the CO. FirstNet has stated that it has already taken after-the-fact actions to address the issues identified in this memorandum. However, we assert that FirstNet must take additional steps to address the control environment that permitted these systemic problems, or else those problems will likely continue to occur.

### NPSBN Contract

- **Unauthorized commitment.** FirstNet management made agreements with the contractor, which the contractor began executing, prior to formalizing the agreement.
  - FirstNet management began discussions with the contractor regarding additional funding and new task orders without involving the NPSBN CO or CORs. We were informed that the contractor contacted FirstNet's CO requesting information regarding the timing of the next task order release. The contractor reported that the new task order had already been discussed with FirstNet management, and the contractor had begun to take action based on the discussions.
  - We were informed that a local telecommunications business not included in the NPSBN contract submitted a request for parking cost in anticipation of a Board of Directors meeting demonstration. Neither the FirstNet acquisition team nor the NPSBN contractor was aware of the demonstration, and the services were not included in the contract.
- **New contract requirements.** FirstNet management requested equipment and information from the contractor that was not included in the contract. For example:
  - The contractor notified FirstNet that it installed a circuit in Boulder, Colorado, as requested; however, the contract did not include the installation of the circuit. FirstNet acquisition staff worked together to codify the new requirement to allow contractor payment for the equipment already installed.
  - The NPSBN contractor reported that FirstNet management requested information from the contractor regarding current and final site power levels. The contractor stated the

---

<sup>5</sup> The NPSBN contract includes the responsibilities of the CO and COR as noted above and is consistent with the Federal Acquisition Regulation (FAR) §§ 1.602 and 1.604. The FAR is codified in title 48 of the Code of Federal Regulations.

<sup>6</sup> U.S. Department of Commerce Office of Inspector General, December 5, 2014. *FirstNet Must Strengthen Management of Financial Disclosures and Monitoring of Contracts*, OIG-15-013-A. Washington, DC: DOC OIG.

information was provided as a courtesy, but FirstNet management used it as a basis for establishing a requirement that was not included in the contract.

- The contractor agreed to provide costly deployable equipment for a FirstNet Board of Directors meeting demonstration; however, the contract did not include this agreement.
- *Improper stop order.* The NPSBN contractor reported that a FirstNet executive, without consulting the CO or COR, instructed the contractor to stop all work planned in preparation for the State Plan release.

In each example, FirstNet personnel actions were outside the authority of FirstNet management. FAR § 1.602-1 specifies that the “authority to enter into, administer, or terminate contracts and make other determinations and findings” is the responsibility of the CO. The NPSBN contract further states that the CO “is the only individual authorized to enter into or terminate [the] contract, modify any term or condition of [the] contract, waive any requirement of [the] contract, or accept nonconforming work.”

## Support Contract

We were informed that a member of FirstNet’s management contacted support contractor leadership to arrange interviews with specific potential contract employees. Later, the same individual requested a delayed start date because of scheduled vacation time, believing their presence was necessary to assign and oversee work priorities of contract employees. Control over hiring decisions and management of contract employee actions gives the appearance of a personal-services contract. FirstNet developed and signed the support contractor contract as a time and materials contract to provide assistance with the NPSBN contract.

FAR § 37.104 characterizes a personal-services contract as similar to an employer/employee relationship in which government personnel direct and supervise the actions of the employee. As a government entity, FirstNet is required by law “to obtain its employees by direct hire under competitive appointment or other procedures required by the civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws . . . .”<sup>7</sup> Although FirstNet acquisition staff provided guidance regarding avoiding the appearance of a personal-services contract, the FirstNet staff member has continued attempts to direct the contractor’s tasks.

In our December 5, 2014, report,<sup>8</sup> we noted that, although two contracts were non-personal services contracts, FirstNet directed the hiring of contract personnel. FirstNet addressed our recommendation in 2015; however, 4 years later, similar issues have again been reported.

## Our Future Work

The concerns presented in this memorandum and any action taken by FirstNet as a result of this management alert will be considered in our future audits of FirstNet. We are not requesting a formal response to this memorandum. This management alert will be posted to our public website.

---

<sup>7</sup> FAR § 37.104(a).

<sup>8</sup> OIG-15-013-A.