

U.S. Department of Labor

Office of Inspector General—Office of Audit

**EMPLOYMENT AND
TRAINING ADMINISTRATION**



ETA'S CONTRACT WITH TCE DIGITAL SOLUTIONS VIOLATED PROVISIONS OF THE SMALL BUSINESS ACT SECTION 8(A)

Date: September 28, 2007
Report Number: 05-07-003-03-390

BRIEFLY...

Highlights of Report Number 05-07-003-03-390, *ETA's Contract with TCE Digital Solutions Violated Provisions of the Small Business Act Section 8(a)*, to the Assistant Secretary for Employment and Training, dated September 2007.

WHY READ THE REPORT

The Office of Inspector General (OIG) conducted a performance audit in response to a complaint received through the OIG Complaint Analysis Office regarding ETA. The complaint alleged improprieties in awarding and managing a specific task order under Contract No. DOL J051A20206, a Small Business Act Section 8(a) contract to The Creative Eye, doing business as TCE Digital Solutions (TCE), which was awarded by ETA's Division of Contract Services.

The Small Business Administration (SBA) has a partnership agreement with DOL to establish basic procedures for expediting the award of contracts and places the responsibility for compliance with DOL. ETA requested approval from SBA for a potential 8(a) contract with TCE. SBA authorized ETA to negotiate and contract with TCE directly, as specified in the partnership agreement. On June 30, 2005, ETA awarded TCE an indefinite-quantity type contract to perform various tasks orders within ETA. The contracting officer recommended TCE subcontract with Maher and Maher to fulfill a request to sustain the Workforce³ One Project then being performed by Maher and Maher under another agreement. TCE agreed to accept a task order that would be subcontracted to Maher and Maher.

WHY OIG CONDUCTED THE AUDIT

The OIG conducted the audit to determine the merits of two allegations:

1. The Assistant Secretary for Employment and Training inappropriately directed the use of a specific company, Maher and Maher (a small business firm that is not 8(a) qualified), as a subcontractor on a task order to support the "Workforce³ One" project, and
2. ETA violated the Federal Acquisition Regulation (FAR) by approving a task order in which substantially all of the cost (and related work) was passed through the 8(a) contractor to the subcontractor.

Our scope included only one contract with TCE for the period June 30, 2005, through June 30, 2006.

READ THE FULL REPORT

To view the report, including the scope, methodology, and full agency response, go to:

<http://www.oig.dol.gov/public/reports/oa/2007/05-07-003-03-390.pdf>

U.S. Department of Labor Office of Inspector General Office of Audit

WHAT OIG FOUND

We found that the allegations were unsubstantiated, as summarized below:

1. We found no evidence that ETA's Assistant Secretary directed the use of Maher and Maher as a subcontractor on a task order to support the "Workforce³ One" project.
2. ETA did not violate the FAR by approving a task order in which substantially all of the cost and related work was passed through the 8(a) contractor to a subcontractor. While Federal regulations and the FAR require an 8(a) contractor to complete at least 50 percent of the work on a contract with its own employees, this requirement does not apply to each individual task order within the contract.

However, the contracting officer recommended TCE use Maher and Maher as a subcontractor to perform the Workforce³ One task order. This action violated sound procurement practices and created the appearance of preferential treatment toward Maher and Maher.

This report incorporates our earlier Alert Report (No. 05-06-005-03-390) detailing three violations of either SBA regulations or contract provisions. Subsequent audit work disclosed that TCE expected to perform only 32 percent of the cost of the contract incurred for personnel with its own employees, although SBA regulations require that 8(a) contractors perform 50 percent. In addition, SBA regulations require this work performance requirement be calculated semiannually.

WHAT OIG RECOMMENDED

We recommended that ETA's Assistant Secretary:

1. ensure that all contracting personnel fully comply with, and promote, the spirit and letter of the Federal procurement and ethics laws and regulations, including, but not limited to, acting impartially and abstaining from the appearance of giving preferential treatment to any organization or individual;
2. establish procedures for contracting officers to monitor the percentage of work contractors perform with their own employees before issuing new task orders or modifying existing contracts for new work; and
3. establish procedures for semiannually monitoring actual compliance with the 50 percent work performance requirement.

HOW THE AGENCY RESPONDED

ETA agreed with all our recommendations and provided a plan for corrective action.

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Executive Summary

The Office of Inspector General (OIG) conducted a performance audit in response to a complaint received through the OIG Complaint Analysis Office regarding ETA. The complaint alleged improprieties in awarding and managing a specific task order under Contract No. DOL J051A20206, a Small Business Act Section 8(a) contract to The Creative Eye, doing business as TCE Digital Solutions (TCE), which was awarded by ETA's Division of Contract Services. Specifically, the allegations were that:

1. The Assistant Secretary for Employment and Training inappropriately directed the use of a specific company, Maher and Maher (a small business firm that is not 8(a) qualified), as a subcontractor on a task order to support the “Workforce³ One” project.
2. ETA violated the Federal Acquisition Regulation (FAR) by approving a task order in which substantially all of the cost (and related work) was passed through the 8(a) contractor to the subcontractor.

Our objective was to determine the merits of the two allegations.

Results

We found that both allegations were unsubstantiated, as summarized below:

1. We found no evidence that ETA's Assistant Secretary directed the use of Maher and Maher as a subcontractor on a task order to support the “Workforce³ One” project.
2. ETA did not violate the FAR by approving a task order in which substantially all of the cost and related work was passed through the 8(a) contractor to a subcontractor. While Federal regulations and the FAR require an 8(a) contractor to complete at least 50 percent of the work on a contract with its own employees, this requirement does not apply to each individual task order within the contract.

However, in examining information related to this overall contract, we determined that ETA violated provisions of the 8(a) BD program not specifically alleged in the complaint. ETA's contracting officer recommended TCE, an 8(a) contractor with an existing ETA contract, use Maher and Maher as a subcontractor to perform the Workforce³ One task order. This action violated sound procurement practices and created the appearance of preferential treatment toward Maher and Maher. Contracting personnel should comply with the spirit and letter of Federal procurement and ethics laws and regulations.

Other Matters That Came to OIG’s Attention

Early in our audit of the hotline allegations, we found three violations of either Small Business Administration (SBA) regulations or contract provisions that we communicated in an Alert Report (Number 05-06-005-03-390), dated June 19, 2006. We recommended, and the Assistant Secretary for Employment and Training agreed, that additional pending contract modifications and the option year of the contract not be exercised. Subsequent audit work resulted in additional recommendations concerning the work performance requirement of TCE’s contract, which are included in this report.

Additionally, SBA regulations require that 8(a) contractors perform 50 percent of the cost of the contract incurred for personnel with its own employees. Through February 28, 2006, TCE had performed only 25 percent of the work with its own staff. According to the contracting officer, the 50 percent requirement is over the life of the contract, not to be determined at a specific point in time. The contracting officer’s interpretation of this requirement is incorrect. SBA regulations also require the work performance requirement be calculated semiannually.

Overall, TCE expected to perform only 32 percent of the cost of the contract incurred for personnel with its own employees. The contracting officer should have been monitoring what percentage of the work TCE planned to perform before issuing each task order, as well as monitoring compliance with the 50 percent work performance requirement semiannually. ETA’s lack of compliance with these regulations could result in ETA, or all of DOL, losing privileges associated with the SBA/DOL Partnership Agreement. This would slow the procurement process when contracting with 8(a) concerns. Further, failure to give TCE the majority of the work in this contract is contrary to the purpose of the 8(a) Business Development (BD) program, since there was little effort to develop TCE with work experience to compete in future ETA procurements.

Recommendations

We recommend that the Assistant Secretary for Employment and Training:

1. ensure that all contracting personnel fully comply with, and promote, the spirit and letter of the Federal procurement and ethics laws and regulations, including, but not limited to, acting impartially and abstaining from the appearance of giving preferential treatment to any organization or individual;
2. establish procedures for contracting officers to monitor the percentage of work contractors perform with their own employees before issuing new task orders or modifying existing contracts for new work; and
3. establish procedures for semiannually monitoring actual compliance with the 50 percent work performance requirement.

Auditee Response

ETA agreed with all our recommendations and provided a plan for corrective action. See Appendix D for the agency's complete response to our draft report.

OIG Conclusion

We consider Recommendations 1, 2, and 3 resolved. These recommendations will be closed after ETA's planned corrective action has been implemented and the OIG has received evidence of the implementation.

U.S. Department of Labor

Office of Inspector General
Washington, D.C. 20210



Assistant Inspector General's Report

Emily Stover DeRocco
Assistant Secretary
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U.S. Department of Labor
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Washington, DC 20210

The Office of Inspector General (OIG) conducted a performance audit in response to a complaint received through the OIG Complaint Analysis Office regarding ETA. The complaint alleged improprieties in awarding and managing a specific task order under Contract No. DOL J051A20206, a Small Business Act Section 8(a) contract to The Creative Eye, doing business as TCE Digital Solutions (TCE), which was awarded by ETA's Division of Contract Services. Specifically, the allegations were that:

1. The Assistant Secretary for Employment and Training inappropriately directed the use of a specific company, Maher and Maher (a small business firm that is not 8(a) qualified), as a subcontractor on a task order to support the "Workforce³ One" project.
2. ETA violated the Federal Acquisition Regulation (FAR) by approving a task order in which substantially all of the cost (and related work) was passed through the 8(a) contractor to the subcontractor.

The United States Small Business Administration (SBA) operates the 8(a) Business Development (BD) program to assist eligible small disadvantaged business concerns to compete in the American economy through business development. SBA has a partnership agreement with DOL to establish basic procedures for expediting the award requirements of the 8(a) BD program. Within ETA, the Division of Contract Services has been delegated responsibility for managing ETA's contracting activity. Additional background information is contained in Appendix A.

We concluded that both of the allegations were unsubstantiated. However, in examining information related to this overall contract, we determined that ETA violated provisions of the 8(a) BD program not specifically alleged in the complaint. ETA's contracting officer recommended TCE, an 8(a) contractor with an existing ETA contract, use Maher and Maher as a subcontractor to perform the Workforce³ One task order. This action created the appearance of favoritism and left the Agency vulnerable to accusations that Maher and Maher received preferential treatment. Contracting

personnel should comply with the spirit and letter of Federal procurement and ethics laws and regulations.

Although, we reported preliminary information about violations of the 8(a) BD program and made a recommendation aimed at preventing further violations in an Alert Report (Number 05-06-005-03-390) issued to DOL's Deputy Secretary on June 19, 2006, this report contains additional information and recommendations related to those Alert Report issues. Specifically, TCE had performed only 25 percent of the work with its own staff. This is contrary to SBA regulations at 13 CFR 125.6(a) (1), which requires an 8(a) contractor to perform 50 percent of the cost of the contract incurred for personnel with its own employees.

We conducted the audit in accordance with Government Auditing Standards for Performance Audits. Our audit objective, scope, methodology, and criteria are detailed in Appendix B.

Objective 1 – Did the Assistant Secretary for Employment and Training Inappropriately Direct the Use of a Specific Company (Maher and Maher) as a Subcontractor on a Task Order to Support the “Workforce³ One” Project?

Results and Finding – We found no evidence that ETA's Assistant Secretary directed the use of Maher and Maher as a subcontractor on a task order to support the “Workforce³ One” project. We did find that ETA's contracting officer recommended TCE, an 8(a) contractor with an existing ETA contract, use Maher and Maher as a subcontractor to perform this task order. This action violated sound procurement practices and created the appearance of preferential treatment toward Maher and Maher. Contracting personnel should comply with the spirit and letter of Federal procurement and ethics laws and regulations.

In June 2003, ETA and the Center for Employment Security Research (CESR) entered into a 2-year grant. In January 2005, the grant was amended to a cooperative agreement. The amended Statement of Work contained in the cooperative agreement gave CESR primary responsibility for the initial development and ongoing maintenance of an integrated web space which became known as the Workforce³ One Integrated Web Space. Maher and Maher started working on the Workforce³ One project in 2005 as a subcontractor to CESR.

In anticipation of the expiration of the cooperative agreement on June 30, 2005, the ETA Office of Workforce Investment (OWI) Contracting Officer's Technical Representative (COTR) contacted the contracting officer with a request to continue the Workforce³ One project using Maher and Maher. The contracting officer recommended initiating a subcontract arrangement with Maher and Maher using an existing 8(a) contract with TCE. The contracting officer arranged a meeting for the purpose of introducing Maher and Maher to TCE, the 8(a) contractor. The contracting officer thought this was a good practice because it would develop the 8(a) contractor and expand the pool of qualified small business concerns for ETA, one of the goals of the

8(a) BD program. TCE agreed to accept a task order that would be subcontracted to Maher and Maher for the purpose of the Workforce³ One Project.

We found no evidence that the Assistant Secretary directed the continuance of the Workforce³ One Project using Maher and Maher. Therefore, we found the complainant's allegation to be without merit.

However, the actions of ETA's contracting officer in assisting the Agency's desire to continue ongoing work with the same provider and recommending that TCE subcontract with Maher and Maher, though not expressly prohibited by any Federal statute or regulation, violates sound procurement practices. We believe that it is commonly accepted in the procurement community that Government procurement staff should not direct or recommend that a contractor subcontract with a particular subcontractor. In addition, the contracting officer's actions gave the appearance of preferential treatment toward Maher and Maher. FAR 3.101-1 states:

Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none.

The Department of Labor Acquisition Regulations, Subpart 2903.101-1 refers the reader to the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR Part 2635. Subpart 2635.101 (b)(8) is applicable to the actions of the contracting officer and states:

Employees shall act impartially and not give preferential treatment to any private organization or individual.

In recommending that TCE subcontract with Maher and Maher, the contracting officer created the appearance of favoritism and left the Agency vulnerable to accusations that Maher and Maher received preferential treatment. Although 8(a) and task order contracts are exempted from the FAR provisions of "full and open competition," the contracting officer's actions violated sound procurement practices as well as the spirit of Federal procurement and ethics laws and regulations.

Recommendation

1. We recommend that the Assistant Secretary for Employment and Training ensure that all contracting personnel fully comply with, and promote, the spirit and letter of the Federal procurement and ethics laws and regulations, including, but not limited to, acting impartially and abstaining from the appearance of giving preferential treatment to any organization or individual.

Agency Response

ETA agreed with Recommendation 1 and is mandating ethics training for all contracting office staff and a refresher as necessary for all Contracting Officer Technical Representatives. The Director, Office of Grants and Contracts Management, will maintain the updated list of completers and require all new personnel to attend the training.

OIG Conclusion

We consider Recommendation 1 resolved. This recommendation will be closed after ETA's planned corrective action has been implemented and the OIG has received evidence of the implementation.

Objective 2 – Did ETA Violate the FAR by Approving a Task Order in Which Substantially All of the Cost (and Related Work) was Passed Through the 8(a) Contractor to the Subcontractor?

Results – ETA did not violate the FAR by approving a task order in which substantially all of the cost and related work was passed through the 8(a) contractor to a subcontractor. While Federal regulations and the FAR require an 8(a) contractor to complete at least 50 percent of the work on a contract with its own employees, this requirement does not apply to each individual task order within the contract.

ETA's contracting officer awarded TCE six task orders under the contract. TCE subcontracted with Maher and Maher to perform the Workforce³ One Project task order (Task Order Number 3), as detailed in Objective 1. Our review of this task order and the corresponding invoices showed Maher and Maher performed all the work related to the Workforce³ One Project task order and received 93 percent of the costs invoiced to DOL for the related work. In addition, for this task order, TCE received an administrative subcontractor fee on each invoice, averaging 7 percent, over and above the labor hours and travel that were reimbursed to the subcontractor.

Federal Regulations place limitations on subcontracting in 13 CFR 125.6(a)(1) and paraphrased in FAR 19.811-3(e):

In the case of a contract for services (except construction), the concern¹ will perform at least 50 percent of the cost of the contract incurred for personnel with its own employees [underlining added for emphasis].

¹ "Concern" means any business entity organized for profit with a place of business located in the United States or its outlying areas and that makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, material and/or labor, etc.

The regulations do not state that this provision applies on a task order basis. Therefore, we found the complainant's allegation to be without merit. However, we did determine that ETA allowed the contractor to violate this regulatory requirement on a contract-wide basis (See item 3 page 10).

Other Matters That Came to OIG's Attention

Results and Finding – As a result of our review of the ETA official contract file of the TCE procurement action and interviews with SBA officials and ETA contracting officials, we identified three violations of either SBA regulations or contract provisions:

1. ETA had awarded contract modifications which in total caused the contract value to exceed the \$3 million limit approved by SBA.
2. The Statement of Work (SOW) contained in the awarded contract was broader than the SOW submitted to and approved by SBA.
3. ETA approved task orders which in total did not require the 8(a) contractor to complete 50 percent of the work with its own employees.

We communicated initial information regarding these violations in an Alert Report (Number 05-06-005-03-390), dated June 19, 2006. To prevent further violations from occurring during completion of our audit work, we recommended, and the Assistant Secretary for Employment and Training agreed, that additional pending contract modifications and the option year of the contract not be exercised.

For purposes of completeness, the Alert Report issues are presented below. Issues 1 and 2 are summarized below and remain unchanged from the information reported in the Alert Report. Audit work completed subsequent to the Alert Report provided a more complete understanding of Issue 3. The updated information and additional recommendations are also presented below.

1. Contract maximum exceeded:

As stated in the Alert Report, the base year value of the TCE contract, through Modification No. 8, dated May 4, 2006, was \$3,702,284. This amount was in excess of the SBA approval and in violation of SBA regulations at 13 CFR 124.506(a) (ii), which limit all non-manufacturing 8(a) contracts to \$3 million, including options.

We recommended that all pending contract modifications to TCE be stopped and that no additional funds or task orders be added to the contract. In addition, since the lifetime contract "not to exceed" maximum had, in fact, been exceeded in the base year, we recommended that the 1-year option not be exercised.

On June 28, 2006, the Assistant Secretary for Employment and Training responded to the Alert Report stating that ETA would cease all pending contract modifications to TCE with the exception of a no cost extension for a Job Corps task order. No additional funds or task orders would be added to the contract. In addition, the 1-year option would not be exercised. The Assistant Secretary further stated that ETA was reviewing all 8(a) contracts to ensure compliance with the SBA 8(a) regulations. ETA has requested permission from SBA to negotiate a new follow-on 8(a) contract with TCE.

Because of ETA's action, this recommendation is resolved and closed.

2. SOW changed after SBA approval:

The SOW in the solicitation package that ETA submitted, and that SBA approved, was limited to tasks in the Job Corps program. However, the SOW contained in the contract awarded to TCE was less restrictive. Specifically, it allowed ETA to issue task orders for programs throughout ETA, including Job Corps (which was part of ETA at the time), Workforce Investment, Performance and Technology, and Foreign Labor Certification (See Exhibit 1). Further, there was no evidence that a copy of the signed contract was provided to the SBA. Failure to provide this documentation is a violation of 13 CFR 124.501(a), which requires a procuring activity to report all 8(a) contract awards, modifications, and options to SBA. The partnership agreement between SBA and DOL provides that failure to provide award documents to SBA could result in SBA's suspension or rescission of the partnership agreement for ETA or all of DOL.

The Assistant Secretary responded to the Alert Report stating that this omission was an oversight by procurement staff who neglected to notify SBA staff of the expanded scope of work. Further, the Assistant Secretary stated that ETA procurement staff have been advised to strictly adhere to the applicable SBA regulations, including contacting SBA immediately concerning changes made to previously approved SOWs, and forwarding copies of all executed 8(a) contracts and modifications to SBA in accordance with the SBA/DOL Partnership Agreement. Finally, the Assistant Secretary stated it had been emphasized to the staff that failure to adhere to the provisions of the Partnership Agreement could result in SBA's suspension or rescission of the partnership agreement.

Based on ETA's efforts to correct this weakness, we consider this issue resolved and closed.

3. Work performance requirement not met:

The Alert Report stated that through February 28, 2006, TCE had performed only 25 percent of the work with its own staff (See Exhibit 2). This is contrary to SBA regulations at 13 CFR 125.6(a) (1), which requires an 8(a) contractor to perform

50 percent of the cost of the contract incurred for personnel with its own employees:

In the case of a contract for services (except construction), the concern will perform at least 50 percent of the cost of the contract incurred for personnel with its own employees.

The Assistant Secretary responded to the Alert Report indicating that this occurrence was attributable to the over obligation of funds in the contract, as noted in Item 1 above. She further responded that ETA will strictly adhere to 13 CFR 125.6.

During the audit, the contracting officer stated that the 50 percent requirement is over the life of the contract, not to be determined at a specific point in time. The contracting officer's interpretation of this requirement is incorrect. Section 124.510(c) (1) of 13 CFR requires that an 8(a) contractor demonstrate compliance with this requirement semiannually:

In order to ensure that the required percentage of costs on an indefinite quantity 8(a) award is performed by the Participant, the Participant must demonstrate semiannually that it has performed the required percentage to that date.

In addition, the contracting officer should have known, based on the task orders that the 8(a) contractor did not intend to meet this requirement. Of the six task orders contained in the subject contract to TCE, four of the six projected that all work would be performed by a subcontractor, not TCE. We calculated the cumulative percentage of work to be performed by TCE and found that, overall, TCE expected to perform only 32 percent of the cost of the contract incurred for personnel with its own employees (See Exhibit 3). The contracting officer should have been monitoring the percentage of the work TCE planned to perform before issuing each task order, as well as monitoring actual compliance with the 50 percent work performance requirement semiannually.

The current SBA/DOL Partnership Agreement includes the DOL responsibility to ensure that all contracts comply with the work performance requirements of FAR 19.811-3(e), which requires that the following clause (FAR 52.219-14) be inserted in all contracts:

(b) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for—

(1) Services (except construction). At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.

ETA's lack of compliance with SBA regulations and FAR requirements could result in ETA, or all of DOL, losing privileges associated with the SBA/DOL Partnership Agreement. This would slow the procurement process when contracting with 8(a) concerns. Further, failure to give TCE the majority of the work in this contract is contrary to the purpose of the 8(a) BD program, since there was little effort to develop TCE with work experience to compete in future ETA procurements.

Recommendations

We recommend that the Assistant Secretary for Employment and Training:

2. establish procedures for contracting officers to monitor the percentage of work contractors perform with their own employees before issuing new task orders or modifying existing contracts for new work; and
3. establish procedures for semiannually monitoring actual compliance with the 50 percent work performance requirement.

Auditee Response

ETA agreed with Recommendations 2 and 3, and will establish procedures for contracting officers to monitor the percentage of work contractors perform with their own employees before issuing new task orders or modifying existing contracts for new work. The procedures will include a provision for monitoring compliance with the 50 percent work requirement semiannually. ETA also plans to undertake a thorough review of its procurement and contract activities to identify changes and make improvements as required.

OIG Conclusion

We consider Recommendations 2 and 3 resolved. These recommendations will be closed after ETA's planned corrective action has been implemented and the OIG has received evidence of the implementation.



Elliot P. Lewis
May 7, 2007

Exhibits

Exhibit 1

Summary of Task Orders

Task Order No. 1:
Signed October 7, 2005
Scope of Work – Job Corps Students with Disabilities
Subcontractor – Humanitas
Period of Performance – July 1, 2005 – June 30, 2006

Task Order No. 2:
Signed October 26, 2005
Scope of Work – Skills to Build
Subcontractor – DTI
Period of Performance – October 26, 2005 – October 25, 2006

Task Order No. 3 (originally Task Order No. 4):
Signed November 30, 2005
Scope of Work – Workforce³ One
Subcontractor – Maher and Maher
Period of Performance – July 1, 2005 – June 30, 2006

Task Order No. 4 (originally Task Order No. 5):
Signed February 10, 2006
Scope of Work – Protech
Subcontractor – DTI
Period of Performance – February 10, 2006 – February 9, 2007

Task Order No. 5 (originally Task Order No. 6):
Signed March 9, 2006
Scope of Work – Prisoner Reentry
Subcontractor Identified as “ODC “
Period of Performance – March 1, 2006 – March 1, 2007

Task Order No. 6:
Signed May 4, 2006
Renumbered Task Order Nos. 4 through 6
Scope of Work – Foreign Labor Certification
No subcontractor
Period of Performance – October 17, 2005 through October 16, 2006

Exhibit 2

**Percentage of Cost of the Contract Incurred for Personnel
Actually Performed by TCE on Each Task Order
Per Invoice Billings
June 30, 2005 through February 28, 2006**

	TCE	Subcontractors*	Total	Percentage Performed by TCE
Task Order No. 1	\$127,354	\$91,415	\$218,769	58.21%
Task Order No. 2	\$0	\$705,714	\$705,714	0.00%
Task Order No. 3	\$0	\$269,537	\$269,537	0.00%
Task Order No. 6	\$221,871	\$0	\$221,871	100.00%
Total	\$349,225	\$1,066,666²	\$1,415,891	24.66%

Note: No invoices were received for billings during this period for Task Order Numbers 4 and 5.

² Some subcontractor costs for wages and other expenses were not broken out on the invoices, therefore total costs were used.

Exhibit 3

**Percentage of Cost of the Contract Incurred for Personnel
to be Performed by TCE
Per Task Orders**

	TCE	Subcontractors	Total
Task Order No. 1			
Cost of Personnel	\$145,651	\$416,193	\$561,844
Percentage	25.92%	74.08%	100.00%
Task Order No. 2			
Cost of Personnel	\$0	\$705,714	\$705,714
Percentage	0.00%	100.00%	100.00%
Cumulative Costs	\$145,651	\$1,121,907	\$1,267,558
Cumulative Percentage	11.49%	88.51%	100.00%
Task Order No. 3			
Cost of Personnel	\$0	\$608,968	\$608,968
Percentage	0.00%	100.00%	100.00%
Cumulative Costs	\$145,651	\$1,730,875	\$1,876,526
Cumulative Percentage	7.76%	92.24%	100.00%
Task Order No. 4			
Cost of Personnel	\$0	\$242,738	\$242,738
Percentage	0.00%	100.00%	100.00%
Cumulative Costs	\$145,651	\$1,973,613	\$2,119,264
Cumulative Percentage	6.87%	93.13%	100.00%
Task Order No. 5			
Cost of Personnel	\$0	\$71,234	\$71,234
Percentage	0.00%	100.00%	100.00%
Cumulative Costs	\$145,651	\$2,044,847	\$2,190,498
Cumulative Percentage	6.65%	93.35%	100.00%
Task Order No. 6			
Cost of Personnel	\$829,759	\$0	\$829,759
Percentage	100.00%	0.00%	100.00%
Cumulative Costs	\$975,410	\$2,044,847	\$3,020,257
Cumulative Percentage	32.30%	67.70%	100.00%

This Exhibit presents only the cost of personnel in each task order. The total amount of funds obligated is \$3,702,284.

Appendices

Appendix A

Background

The 8(a) BD program is authorized under Section 8(a) of the Small Business Act and provided for in SBA regulations at 13 CFR Parts 124 and 125. The purpose of the 8(a) BD program is to assist eligible small disadvantaged business concerns to compete in the American economy through business development.

SBA utilizes partnership agreements with Federal agencies to establish basic procedures for expediting the award of requirements pursuant to Section 8(a) of the Small Business Act and SBA's regulations. DOL's current partnership agreement with SBA was signed September 15, 2005. This agreement places the responsibility to comply with the Small Business Act, SBA's regulations, and the FAR with the contracting agency.

DOL's policy is to provide maximum opportunities to small business in acquisitions. DOL's contracting officers are responsible for working with program officials to meet or exceed DOL agencies' small business procurement goals. Contracting officers must conduct performance evaluations of an 8(a) contract throughout the contract period. Any unresolved problems must be referred to and discussed with the appropriate SBA official.

Department of Labor Manual Series (DLMS) 2, Section 814(a)(1)(a) delegates the Assistant Secretary for Employment and Training, or an officer acting in that capacity, authority and responsibility for obtaining all program property and services required to fulfill the statutory and regulatory responsibilities imposed on the Assistant Secretary. DLMS-2, Section 832 E(2) designates the Director, Office of Grants and Contract Management (OGCM), as the Head of Contracting Activity for ETA. This official has overall responsibility for managing the contracting activity. The contracting officers in the Division of Contract Services report to the Director, OGCM.

On June 3, 2005, ETA's Division of Contract Services forwarded a request to SBA for approval of a requirement for a potential 8(a) contract with TCE. According to the request, ETA contemplated a 12 month indefinite-quantity type contract with two 1-year options at the discretion of the Government, not to exceed \$3 million. SBA accepted the requirement to "assist Job Corps in supporting students with disabilities in three areas." SBA authorized ETA to negotiate and contract with TCE directly, as specified in the partnership agreement because it was determined that TCE had the requisite capabilities to satisfactorily perform the work. On June 30, 2005, ETA awarded TCE an indefinite-quantity type contract (No. DOL J051A20206) to perform various task orders within ETA.

TCE, located in Camp Springs, Maryland, is an 8(a) firm specializing in organizational and workforce development. Before receiving the June 2005 contract, TCE had no prior ETA experience.

TCE contracted with a variety of subcontractors under its DOL contract. One specific company was Maher and Maher, located in Neptune, New Jersey, a small business firm specializing in consulting, training and eLearning. The affiliation of the two companies began when the OWI COTR contacted the contracting officer with a request to sustain the Workforce³ One Project then being performed by Maher and Maher under a cooperative agreement with CESR. The contracting officer recommended initiating a subcontract arrangement with Maher and Maher using an existing 8(a) contract with TCE. The contracting officer arranged a meeting for the purpose of introducing Maher and Maher to TCE, the 8(a) contractor. The contracting officer thought this was a good practice because it would develop the 8(a) contractor and expand the pool of qualified small business concerns for ETA, one of the goals of the 8(a) BD program. TCE agreed to accept a task order that would be subcontracted to Maher and Maher for the purpose of the Workforce³ One Project.

Overall, Maher and Maher's involvement with the Workforce³ One Project began under the CESR cooperative agreement (through June 30, 2005) and continued under the TCE contract (through June 30, 2006), and starting in July 2006, is now being performed under Maher and Maher's own partial small business set-aside contract (No. DOL J061A20373), awarded by ETA on June 29, 2006.

Appendix B

Objective, Scope, Methodology, and Criteria

Objective

The objective of our performance audit was to determine the merits of two allegations received through the OIG Complaint Analysis Office against ETA. The complaint alleged contracting improprieties when using the Small Business Act Section 8(a) for contract awards. Specifically, the allegations were:

1. The Assistant Secretary for Employment and Training inappropriately directed the use of a specific company, Maher and Maher (a small business firm that is not 8(a) qualified), as a subcontractor on a task order to support the “Workforce³ One” project.
2. ETA violated the Federal Acquisition Regulation (FAR) by approving a task order in which substantially all of the cost (and related work) was passed through the 8(a) contractor to the subcontractor.

Scope

Our audit scope included only Contract No. DOL J051A20206, awarded by ETA’s Division of Contract Services to TCE. The contract covered the period June 30, 2005, through June 30, 2006. To meet our objectives, we only tested certain controls in the contracting processes used by the Division of Contract Services.

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.

Methodology

To determine the merits of the allegations, we interviewed DOL officials within ETA’s Division of Contract Services, the OWI COTR who requested the continuation of the Maher and Maher contract services, and a representative of the Office of Small Business Programs. We also interviewed officials at SBA’s Washington Metropolitan Area District Office, the President of TCE, and the President of Maher and Maher. We reviewed pertinent Federal and DOL contracting regulations and policies, and reviewed and analyzed pertinent documentation related to the award and management of the TCE contract, including ETA’s official TCE contract file containing the contract, task orders, and correspondence. Further, we performed a search of archived e-mails of the Assistant Secretary, COTR, contracting officer, and other contracting staff and reviewed pertinent documentation.

Our audit was conducted onsite at the ETA National Office and the SBA Washington Metropolitan Area District Office. Our fieldwork began March 21, 2006, and ended May 7, 2007.

Criteria

We used the following criteria to perform this audit:

- 5 CFR Subpart 2635.101 – Standards of Ethical Conduct for Employees of the Executive Branch, General Provisions, Basic Obligation of Public Service
- 13 CFR Part 124 – 8(a) Business Development/Small Disadvantaged Business Status Determinations
- 13 CFR Part 125 – Government Contracting Programs
- FAR Part 3 – Improper Business Practices and Personal Conflicts of Interest, Subpart 3.1 – Safeguards
- FAR Subpart 16.5 – Indefinite-Delivery Contracts
- FAR Subpart 19.8 – Contracting with the Small Business Administration [The 8(a) Program]
- 48 CFR Chapter 29 (DOL Acquisition Regulations) Subpart 2903 – Improper Business Practices and Personal Conflicts of Interest
- 48 CFR Chapter 29 (DOL Acquisition Regulations) Subpart 2919 – Small Business and Small Disadvantaged Business Concerns
- DLMS 2, Section 800, Grant and Procurement Management
- SBA/DOL Partnership Agreement dated September 15, 2005

Appendix C

Acronyms and Abbreviations

BD	Business Development
CESR	Center for Employment Security and Research
CFR	Code of Federal Regulations
COTR	Contracting Officer's Technical Representative
DLMS	Department of Labor Manual Series
DOL	U.S. Department of Labor
ETA	Employment and Training Administration
FAR	Federal Acquisition Regulation
OGCM	Office of Grants and Contract Management
OIG	Office of Inspector General
OWI	Office of Workforce Investment
SBA	Small Business Administration
TCE	The Creative Eye, doing business as TCE Digital Solutions

Agency Response to Draft Report

U.S. Department of Labor

Assistant Secretary for
Employment and Training
Washington, D.C. 20210



SEP 28 2007

MEMORANDUM FOR: ELLIOT P. LEWIS

FROM:

EMILY STOVER DeROCCO

A handwritten signature in black ink that reads "Emily Stover DeRocco".

SUBJECT:

ETA's Contract with TCE Digital Solutions
Violated Provisions of the Small Business Act Section 8(a)
Response to OIG Draft Audit Report No. 05-07-003-03-390

Thank you for the opportunity to review and respond to the subject draft audit report. The Employment and Training Administration (ETA) acknowledges the findings and has addressed the three recommendations below.

1. OIG's Recommendation: Ensure that all contracting personnel fully comply with, and promote the spirit and letter of the Federal procurement and ethics laws and regulations, including, but not limited to, acting impartially and abstaining from the appearance of giving preferential treatment to any organization.

ETA's Response: ETA takes the procurement and ethics laws and regulations very seriously. To ensure that staff contract personnel fully comply, we are mandating ethics training for all contracting office staff, and a refresher class as necessary, for all Contracting Officer Technical Representatives. The Director, Office of Grants and Contracts Management, will maintain the updated list of completers and require all new personnel to attend the training.

2. OIG's Recommendation: Establish procedures for contracting officers to monitor the percentage of work contractors perform with their own employees before issuing new task orders or modifying existing contracts for new work.

ETA's Response: We concur with the recommendation and ETA's Division of Contract Services will include written procedures in our action plan to ensure compliance with the Federal Acquisition Regulations and make them available to the OIG for review. It is our plan to undertake a thorough review of ETA's procurement and contract activities to identify changes and make improvements as required.

3. OIG's Recommendation: Establish procedures for semiannually monitoring actual compliance with the 50% work requirement.

ETA's Response: The procedures discussed in response #2 will include a provision for monitoring compliance and will also be provided to the OIG upon completion.

IN ORDER TO REPORT FRAUD, WASTE OR ABUSE, PLEASE CONTACT:

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Email: hotline@oig.dol.gov

Telephone: 1-800-347-3756
202-693-6999

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