Appendix D

OSHA Response to Draft Report

U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210

Reply to the attention of:

MAR 30 2009

MEMORANDUM FOR: ELLIOT P. LEWIS
Assistant Inspector General
for Audit

FROM: DONALD G. SHALHOUB
Deputy Assistant Secretary

SUBJECT: Response to OIG's Draft Audit Report
No. 03-09-002-10-001
"Procurement Violations and Irregularities
Occurred in OSHA's Administration of a
Blanket Purchase Agreement"

This memorandum is in response to your March 13, 2009, transmittal of the Office of Inspector General (OIG) Draft Audit Report No. 03-09-002-10-001, "Procurement Violations and Irregularities Occurred in OSHA's Administration of a Blanket Purchase Agreement." OSHA appreciates the effort expended by the OIG financial auditors in their review of the Blanket Purchase Agreement (BPA) and in discussing with OSHA officials the specific background and past practices in the Department and OSHA with respect to the use of BPA's. While the Agency is disappointed in the overall findings of the audit, we are encouraged that this report will help OSHA clarify processes and procedures that will enable the Agency to avoid such difficulties and procedural misunderstandings in the future.

We take note of the reference in the Draft Audit Report that the OIG's Office of Special Investigations was investigating this matter at the time of the audit. As a consequence, OSHA will refrain from a detailed reaction to each of the three findings. However, we would like to briefly touch upon the question of what constitutes sufficient evidence to reflect deliverables received by the Agency. The Department has always recognized meetings, presentations, and preparation and assistance in producing work products as legitimate deliverable work products. It is my understanding that OSHA officials interviewed for this audit described multiple examples of activity undertaken for OSHA by the contractor in question, Mr. Randy Kimlin. The Agency held two management leadership conferences in Hunt Valley, Maryland in 2006 and Lake Mary,

Florida in 2008 for which Mr. Kimlin was instrumental in their development and coordination. Mr. Kimlin routinely dealt with OSHA's then Assistant Secretary Edwin G. Foulke, Jr. on a regular daily basis. This was accomplished both through direct conversations and meetings involving Mr. Foulke as well as by work focused on various projects on behalf of the Assistant Secretary including succession planning and the development of the mission and values statement for the Agency that was approved in 2008. Mr. Kimlin's involvement and assistance in working on these activities was well known throughout the Agency. We strongly believe that the suggestion that OSHA can not demonstrate it received any services for the money expended for Mr. Kimlin would not be supported in a further investigation and evaluation of the facts.

With respect to the specific recommendations from the OIG, OSHA responds as follows:

Recommendation 1: Work with OASAM procurement officials to develop an internal policy for obtaining consulting services that complies with applicable Federal regulations and DOL policies

OSHA Response: The Agency agrees with this recommendation. OSHA will work with the OASAM procurement office to refine Agency policies related to hiring contractors for advisory and assistance services to ensure that Agency policies comply with applicable Federal regulations and DOL policies. OSHA commits to put this internal policy in writing and provide it to the OIG upon its completion in order to close out this recommendation.

Recommendation 2: Recover $681,379 paid to GMSI for Mr. Kimlin's labor and travel costs.

OSHA Response: The Agency does not fully agree with this recommendation. OSHA believes that the disallowance of all costs associated with the BPA in question is an overly broad rejection of the costs related to the work that was provided by Mr. Kimlin for OSHA and is unnecessarily injurious to the contractor, GMSI. Given that the OIG is recommending the recovery of all the costs associated with Mr. Kimlin's labor hours and travel, the Agency defers making a final response to this recommendation until the OIG's Office of Special Investigations completes its current investigation into this matter and provides its findings to OSHA. With that information in hand, OSHA would hope to be in a better position to assess this recommendation and determine a fair and reasonable Agency response.

Not withstanding the Agency's rejection of the totality of Recommendation 2 disallowing all costs associated with the BPA, OSHA does acknowledge that $95,658

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in commuting travel expenses for Mr. Kimlin was not allowed by the terms and conditions of the BPA. These costs should not have been charged to the government. OSHA agrees to seek recovery of those costs from the contractor.

With respect to the $153,161 in costs associated with labor hours worked in excess of a particular line item estimate on the BPA, the Agency does not agree with the OIG conclusion that such costs are per se unallowable. Such an interpretation had not previously been communicated to the Agency by the DOL Contracting Officer or other Departmental procurement officials responsible for the administration of the BPA. Neither had that been our past practice to view BPA labor hours submitted in carts to the procurement office as being absolute line item limits rather than estimates that could not be exceeded with respect to the overall value of the BPA. The Agency was aware of the costs being incurred by Mr. Kimlin and the hours that were being billed by him under the BPA. Pending receipt and review of the current investigation of the OIG's Office of Special Investigations, the Agency does not agree that the $153,161 should be recovered based solely on the fact that labor hours were paid in excess of the labor hour estimates on the BPA.

Recommendation 3: Ensure OSHA managers and supervisors do not bypass control procedures already in place for administering contracts.

OSHA Response: The Agency agrees with this recommendation. OSHA will review its existing controls and procedures for administering contracts and determine if any additional measures or clarifications are necessary. Once this review is completed, the Agency will take appropriate action to see that these control procedures are disseminated to OSHA managers and supervisors and those involved in the procurement process. It is the Agency's intent that such control procedures will be both well understood and properly applied in the administration of contracts.

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