

U.S. Department of Labor

Office of Inspector General—Office of Audit

**MINE SAFETY & HEALTH
ADMINISTRATION**



MSHA's CONTROLS OVER CONTRACT AWARDS NEED STRENGTHENING

Date Issued: February 16, 2011
Report Number: 05-11-001-06-001

BRIEFLY...

Highlights of Report Number 05-11-001-06-001, to the Assistant Secretary of Labor for Mine Safety and Health.

WHY READ THE REPORT

The mission of the U.S. Department of Labor's (DOL) Mine Safety and Health Administration (MSHA) is to promote safe and healthful workplaces for the nation's miners. DOL's Office of the Assistant Secretary for Administration and Management (OASAM) responsibilities include managing the Department's procurement programs. OASAM has delegated to MSHA the authority and responsibility to contract for all of MSHA's program property and services. Within MSHA, the Directorate of Administration and Management (A&M) is responsible for managing contracting activity.

Federal procurement regulations require, among other things, that MSHA promote full and open competition, provide maximum opportunities to small businesses, and ensure compliance with general procurement requirements. Past Office of Inspector General (OIG) audit work at MSHA identified weaknesses in these areas. Specifically, a 2004 report concluded that MSHA consistently demonstrated a lack of regard for Federal Acquisition Regulation principles, and a 2008 report identified weaknesses in MSHA's awarding of procurement actions without full and open competition (i.e., sole source).

WHY OIG CONDUCTED THE AUDIT

We conducted this audit to determine whether MSHA complied with appropriate procurement regulations and procedures when making new contract awards.

The audit covered 133 new awards with individual values of \$25,000 or more that MSHA awarded from April 1, 2008, through September 30, 2009, totaling \$16 million.

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/2011/05-11-001-06-001.pdf>.

February 2011

MSHA'S CONTROLS OVER CONTRACT AWARDS NEED STRENGTHENING

WHAT OIG FOUND

The OIG found that MSHA did not adequately support sole source awards, promote full and open competition, or maximize small business opportunities for 28 percent of the contract awards. Deficiencies included no justifications or inadequate justifications to make awards without full and open competition, no Procurement Review Board reviews and Chief Acquisition Officer approvals when required, no publication of solicitations, and no review of proposed procurements by the Office of Small Business Programs.

In addition, MSHA did not comply with applicable DOL procurement procedures for 38 percent of the awards. Deficiencies included no review of solicitations or pre-award packages by DOL's Office of the Solicitor as required by a Memorandum of Agreement, no approval by the Assistant Secretary for Administration and Management, no conflict of interest certifications from program officials, and incomplete Simplified Acquisition Documentation Checklists (Form DL 1-2216) for contracts under \$100,000.

These deficiencies occurred because of a lack of management oversight. By not promoting full and open competition, maximizing small business opportunities, or following appropriate procurement procedures, MSHA could not demonstrate that it made the best award decisions.

WHAT OIG RECOMMENDED

The OIG made 4 recommendations to the Assistant Secretary for Mine Safety and Health to ensure procurement officials comply with procedures, require supervisory review of contracts, provide refresher training to personnel, and develop and implement controls to assure the Office of the Solicitor completes pre-award reviews of selected contracts as required.

The Assistant Secretary agreed with our recommendations and stated that MSHA is taking action to review its procurement program, identify lapses, and develop and implement new management procedures to improve the effectiveness and accountability of its contracting.

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U.S. Department of Labor

Office of Inspector General
Washington, D.C. 20210



February 16, 2011

Assistant Inspector General's Report

Joseph A. Main
Assistant Secretary for Mine Safety and Health
U.S. Department of Labor
1100 Wilson Boulevard
Arlington, Virginia 22209

The mission of the U.S. Department of Labor's (DOL) Mine Safety and Health Administration (MSHA) is to promote safe and healthful workplaces for the nation's miners. DOL's Office of the Assistant Secretary for Administration and Management (OASAM) responsibilities include managing the Department's procurement programs. OASAM has delegated to MSHA the authority and responsibility to contract for all of MSHA's program property and services. Within MSHA, the Directorate of Administration and Management (A&M) is responsible for managing contracting activity.

Federal procurement regulations require, among other things, that MSHA promote full and open competition, provide maximum opportunities to small businesses, and ensure compliance with general procurement requirements. Past Office of Inspector General (OIG) audit work at MSHA identified weaknesses in these areas. Specifically, a 2004¹ report concluded that MSHA consistently demonstrated a lack of regard for Federal Acquisition Regulation (FAR) principles, and a 2008² report identified weaknesses in MSHA's awarding of procurement actions without full and open competition (i.e., sole source).

From April 1, 2008, to September 30, 2009, MSHA completed 1,648 procurement actions valued at \$36 million. These actions consisted of 1,000 modifications to existing contracts³ and 648 new awards.

We conducted an audit to determine whether MSHA complied with appropriate procurement regulations and procedures when making new contract awards. Our audit

¹ Mine Safety and Health Administration Procurements Showed a Pattern of Disregard for Federal and DOL Acquisition Rules and Requirements. (Report No. 25-05-001-06-001, October 29, 2004).

² The Department of Labor's Controls Over Sole Source Procurements Need Strengthening. (Report No. 03-08-002-07-711, September 30, 2008).

³ Contracts include: General Services Administration (GSA) orders, purchase orders, delivery orders issued under blanket purchase agreements, and Governmentwide Acquisition Contracts.

covered 133 new awards with individual values of \$25,000 or more that MSHA awarded from April 1, 2008, through September 30, 2009, totaling \$16 million.

To accomplish our audit, we reviewed applicable sections of the Federal Acquisition Regulation (FAR) and DOL's procurement policies and procedures through May 10, 2010. We interviewed MSHA officials and staff to gain an understanding of their procurement process and controls. We reviewed contract files for a statistical sample of 133 new awards for compliance with FAR and DOL procurement requirements. We conducted audit work at MSHA's Headquarters located in Arlington, Virginia and the National Mine Health and Safety Academy located in Beaver, West Virginia.

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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Our objective, scope, methodology, and criteria are detailed in Appendix B.

RESULTS IN BRIEF

MSHA did not always adequately support sole source awards, promote full and open competition, or maximize small business opportunities for 28 percent of the awards of \$25,000 or more. Deficiencies included no justifications or inadequate justifications to make awards without full and open competition (12 instances); no Procurement Review Board (PRB) reviews and Chief Acquisition Officer (CAO) approvals when required (4 instances); no publication of solicitations (10 instances); and no review of proposed procurements by the Office of Small Business Programs (OSBP) (14 instances).

In addition, MSHA did not comply with appropriate DOL procurement procedures for 38 percent of the awards of \$25,000 or more. Deficiencies included no review of solicitations or pre-award packages by DOL's Office of the Solicitor (SOL) as required by a Memorandum of Agreement (MOA) (16 instances); no approval by the Assistant Secretary for Administration and Management (ASAM) (4 instances); no conflict of interest certifications from program officials (9 instances); and incomplete Simplified Acquisition Documentation Checklists (Form DL 1-2216) for contracts under \$100,000 (17 instances)⁴.

These deficiencies occurred because of a lack of management oversight. By not promoting full and open competition, maximizing small business opportunities, or following appropriate procurement procedures, MSHA could not demonstrate that it made the best award decisions.

⁴ As a result of our audit, MSHA recreated, corrected, or completed these forms.

We recommended that the Assistant Secretary for Mine Safety and Health (1) ensure MSHA procurement officials comply with procedures for PRB review and CAO approval as required by DOL policy; (2) require the Director of A&M to document, prior to final contract award, supervisory review of all contracts awarded without full and open competition, all contracts with a value of \$100,000 or more, and a representative sample of contracts valued from \$25,000 to \$100,000; (3) define and implement a program to provide refresher training on procurement requirements contained in the FAR, Department of Labor Acquisition Regulation (DOLAR), and Department of Labor Manual Series (DLMS) to all MSHA contracting personnel at least annually; (4) and develop and implement controls to track the Acquisitions Management Division's (AMD) compliance with the provisions of the MOA with DOL's SOL.

In responding to our draft report, the Assistant Secretary for Mine Safety and Health agreed that additional management controls and oversight would strengthen accountability. He agreed with all of our recommendations and specifically stated that MSHA is taking aggressive action to review its procurement program, identify lapses, and correct them. He also reiterated MSHA's longstanding commitment to a robust procurement program that provides both opportunities for small business and a successful competitive environment that maximizes value for the government.

The Assistant Secretary's entire response is contained in Appendix D.

RESULTS AND FINDINGS

Objective 1 — Did MSHA comply with appropriate procurement regulations and procedures in awarding contracts?

Restrictions on competition and small business opportunities were not always supported; noncompliance with procurement regulations and procedures was common.

Finding 1 — MSHA did not adequately justify sole source procurements, promote full and open competition, or maximize opportunities for small businesses.

In 19 percent⁵ of contracts between \$25,000-\$100,000 and 42 percent of contracts above \$100,000, MSHA did not adequately justify sole source procurements, assure full and open competition, or assure maximum opportunities for small businesses. Specifically, our review of 88 contracts identified 40 instances in 25 contracts⁶ in which MSHA had no or inadequate justifications to award the contracts on a sole source basis (12 instances); did not obtain PRB reviews and CAO approvals when required by DOL policy (4 instances); did not publicize proposed contracts (10 instances); or did not

⁵ The projected result of the statistical sample, at a 95 percent confidence level, ranges between 11 percent and 27 percent.

⁶ Some contracts demonstrated more than one deficiency.

coordinate requirements with the Department’s OSBP for unrestricted procurements above \$100,000 (14 instances). See Exhibit 1 for a summary of deficiencies identified in each of the 25 contracts.

MSHA’s internal controls, including management oversight, did not ensure adherence to applicable procurement procedures. As a result, MSHA could not demonstrate that it made the best contract award decisions.

Most sole source contracts had no justification or lacked an adequate justification.

Of the 19 contracts in the audit sample that MSHA awarded on a sole source basis, 5 had no justification and 7 lacked an adequate justification. For example:

- On April 22, 2008, MSHA awarded a delivery order totaling \$230,340 through an existing General Services Administration (GSA) Schedule for noise dosimeter kits. The delivery order was awarded without evidence of any competition and without the sole source justification required by the FAR.

MSHA stated that *“This is a GSA Schedule order in which MSHA did not restrict competition and followed the procedure of FAR 8.405-1(c)(1).”* This FAR provision states that orders placed through a GSA supply schedule should be placed with the schedule contractor that can provide the best value. Before placing an order, an ordering activity shall *“[survey] at least three schedule contractors through the GSA Advantage! on-line shopping service, or by reviewing the catalogs or pricelists of at least three schedule contractors.”* The contract file contained no evidence that the contracting officer surveyed or reviewed information from three schedule contractors.

Instead, the file contained a handwritten note stating *“single source under a GSA contract.”* The contract file also contained an email from the contract recipient stating that it was the sole source manufacturer of the desired product and the lone authorized participant in the GSA schedule contract. Under these circumstances, FAR 8.405-6(g)(2) required that the contract file contain a “Limited Source Justification” that addressed a minimum of ten specific elements, including a determination by the contracting officer that the order represented the best value, the actions, if any, the agency may take to remove or overcome barriers that led to the restricted consideration before any subsequent acquisition, and the contracting officer’s certification that the justification was accurate and complete. The contract file did not contain a document or documents that addressed the limited source justification elements required by the FAR.

- On June 9, 2009, MSHA awarded a delivery order totaling \$54,000 through an existing GSA Schedule for respirable dust cassettes. The delivery order was awarded without evidence of any competition and without the sole source justification required by the FAR.

MSHA stated that *“This is a GSA Schedule order in which MSHA did not restrict competition and followed the procedure of FAR 8.405-1(c)(1).”* As explained in the previous example, this FAR reference requires the contracting officer to place the order with the schedule contractor providing the best value after surveying or reviewing pricelists from three schedule contractors. The contract file contained no evidence that MSHA’s contracting officer performed these actions.

Instead, the contract file contained a handwritten note, dated June 3, 2009, that read *“Per [the Director of AMD] award under GSA **single source contract due to lead time required and districts urgent need** [bolding added for emphasis].”* Although FAR 8.405-6(b)(3) does allow the restriction of competition when there is an “urgent and compelling need,” AMD received the request to purchase these items on March 19, 2009 - almost 3 months prior to actually placing the order. This delay does not support an “urgent need.”

- On December 10, 2008, and May 14, 2009, MSHA placed separate delivery orders, each valued at \$339,300, to a GSA Schedule contractor for the purchase of respirable dust filters. Neither contract file contained any evidence of competition. Instead, both contract files contained written justifications for “Other Than Full and Open Competition,” although neither justification was signed by a program official or the contracting officer, as required. Both justification statements incorrectly cited FAR 6.302-5 as their authority to restrict competition. This FAR provision does not apply to GSA Schedule orders, which are specifically exempt from FAR Part 6.⁷

MSHA stated that each of these delivery orders was *“a GSA Schedule order in which MSHA did not restrict competition and followed the procedure of FAR 8.405-1(c)(1).”* However, as previously explained, this FAR provision requires a contracting officer to survey at least three scheduled contractors through the GSA website or review the catalogs or pricelists of at least three schedule contractors prior to placing an order. The contract file contained no evidence that MSHA’s contracting officer performed these actions.

Without proper support for contracts awarded on a sole source basis, MSHA cannot demonstrate that it determined prices to be fair and reasonable or that it received the best possible value in these procurements.

Required PRB reviews and CAO approvals were not obtained.

MSHA did not obtain a PRB review and recommendation or a CAO approval for four of eight contracts in the audit sample that required them. As a result, MSHA lacked

⁷ FAR 8.405-6(a)(2) states: Orders placed under Federal Supply Schedules are exempt from the requirements in Part 6. However, an ordering activity must justify its action when restricting competition to an item peculiar to one manufacturer.

assurance that the contracts had been properly awarded and that MSHA had received the best value.

DLMS 2, Chapter 836, established the PRB as a senior-level clearinghouse to review selected noncompetitive acquisition proposals and assistance instruments and recommend approval or disapproval to the CAO. PRB review and CAO approval applies to various actions, including all proposed acquisitions and assistance actions over [\$100,000], which are to be awarded under “other than full and open competition” procedures, and all contracted advisory services, valued above \$50,000, to be awarded under “full and open competition” procedures. Requests for PRB review are to be forwarded at least 60 days before planned award to allow the PRB sufficient time to review and consider its recommendation.

The following two examples show the lack of controls to assure that these requirements were being met.

- MSHA awarded a noncompetitive contract on December 1, 2008, totaling \$132,800, for personal dust monitors and related items. The contracting officer did not obtain a review or recommendation from the PRB or approval from the CAO prior to making the award, as required.

MSHA stated that AMD received this purchase request on December 1, 2008, along with assertions from the requesting program office that the quoted price was only good through the end of that day. After December 1, 2008, the cost reportedly would increase by \$900 per unit (an additional \$9,900 for the 11 units purchased). The contracting officer indicated the CAO had approved the procurement. However, the contract file did not contain nor did the contracting officer provide evidence to support this assertion. The Director of AMD stated that he approved the justification for a noncompetitive purchase in order to obtain the discounted price.

The Director of AMD lacked the authority to exempt this procurement action from the requirement for PRB review and CAO approval prior to issuing a noncompetitive contract.

- On June 1, 2009, MSHA awarded an advisory and assistance contract totaling \$175,000 through full and open competition procedures for statistical analysis and evaluation services. The contracting officer did not obtain a review or recommendation from the PRB or approval from the CAO prior to making the award, as required.

MSHA stated that it had obtained PRB review and CAO approval and provided a copy of a Request for Recommendation by Procurement Review Board and a letter from the CAO.

The documents provided by MSHA did not relate to the contract we reviewed. Rather they related to a prior purchase order that MSHA had awarded without competition to the same contractor on October 1, 2008, in the amount of \$100,000. CAO approval of this prior purchase order does not have any bearing on separate, subsequent contracts.

By not obtaining PRB review and CAO approval when required, MSHA lacked assurance that the contracts had been properly awarded and that MSHA had received the best value.

Proposed contracts were not publicized.

MSHA did not publish a public notice for 10 of 30 contracts in the audit sample that required them. As a result, MSHA had no assurance that all interested, responsible parties had an opportunity to compete for the award of these contracts.

FAR 5.002 requires contracting officers to publicize contract actions to increase competition, broaden industry participation in meeting Government requirements, and assist various small businesses in obtaining contracts and subcontracts. Specifically, FAR 5.101(a) requires contracting officers to disseminate information on proposed contract actions expected to exceed \$25,000 in the “Governmentwide Point of Entry” (GPE)⁸ for at least 10 days beginning no later than the date the solicitation is issued.

FAR 5.202 lists 14 specific exceptions to this requirement for public notice. For example, public notice is not required if:

- Disclosure would compromise national security;
- The proposed contract action is expressly authorized or required by statute to be made through another government agency or from a specific source;
- The proposed contract action is for utility services other than telecommunications services and only one source is available; or
- The agency head determines, in writing, that advance notice is not appropriate or reasonable.

MSHA did not synopsise 10 contracts (including seven sole source actions) in the GPE to ensure offers were solicited from as many potential sources as practicable, as required by FAR 5.2. For example:

- On November 17, 2008, MSHA awarded a purchase order totaling \$41,470 without competition to upgrade a computer program that was part of its Trapped Miner Detection and Location system. MSHA did not publish this contract in the GPE as required.

⁸ Per FAR 2.101, the Governmentwide Point of Entry is located at <http://www.fedbizopps.gov>.

MSHA cited FAR 5.202(a)(13)(i) and FAR 5.301(b)(7)(i) and stated that this purchase order was exempt from requirements for publication in the GPE because its estimated value was less than \$100,000.

However, the exception listed at FAR 5.202(a)(13) is a three-pronged test. It states that a contracting officer need not submit the notice to the GPE when

- (13) The proposed contract action—
 - (i) Is for an amount not expected to exceed the simplified acquisition threshold [\$100,000];
 - (ii) Will be made through a means that provides access to the notice of proposed contract action through the GPE; **and**
 - (iii) Permits the public to respond to the solicitation electronically.
[Bolding added for emphasis]

To meet this exception all three elements of the test must be met. While the purchase order was below the \$100,000 threshold (test 1), there was no evidence that the purchase order met either of the other two exception tests.

FAR 5.301(b)(7)(i) relates to publishing contract award information and is therefore not relevant to the deficiency cited. However, it too contains the same three-pronged test as in FAR 5.202(a)(13).

By not publishing this proposed purchase order in the GPE, MSHA did not assure the fullest level of competition. Thus, there is no assurance that the government obtained the best value on this purchase order.

- From May 2008 to August 2009, MSHA awarded three contracts for the purchase and calibration of anemometers for use by mine inspectors totaling \$276,855 to one contractor. MSHA again cited the same FAR exemption as in the previous example, but provided no evidence that these actions met the second or third elements of the exception.

In addition, MSHA stated that the product purchased was the only anemometer certified by MSHA for use in mines. Since the Federal Mine Safety and Health Act of 1977 (the Mine Act) requires that only products certified by MSHA as intrinsically safe can be used in mines, MSHA argued that this purchase met the FAR exception (FAR 5.202(a)(4)) of being required by statute to be purchased from a specific source.

However, MSHA's Approval and Certification Center stated that it had no record that it had approved anemometers from this manufacturer for use in mines and that other manufacturers do hold MSHA approvals for anemometers.

- On April 18, 2008 MSHA awarded a contract totaling \$298,220 for the purchase of multi gas detectors. MSHA did not publish this contract in the GPE as required. Instead, the contracting officer simply requested price quotes from three vendors who had competed for a previous contract for the same equipment.

The FAR does not provide an exception to the requirement to publish contracts in the GPE based on publication of previous contracts. MSHA agreed that this action should have been published in the GPE.

- On June 20, 2008, MSHA issued a purchase order totaling \$28,567 for the maintenance of computer servers. MSHA had not published this proposed purchase order in the GPE as required.

MSHA agreed that this proposed purchase order should have been published in the GPE.

By not publishing proposed contracts in the GPE as required, MSHA did not promote full and open competition. As a result, MSHA had no assurance that it obtained maximum competition, and therefore, the best value in its procurements.

Small Businesses did not receive maximum practicable opportunities for unrestricted procurements above \$100,000.

For all 38 contracts above \$100,000, MSHA did not obtain the required review of proposed contracts by the OSBP. As a result, MSHA did not ensure maximum practicable opportunities to small businesses.

DOLAR 2919.201(c) requires that

All DOL procurements over the simplified acquisition threshold [\$100,000], whether being conducted via open market or by ordering from a pre-existing contract vehicle such as GSA Schedule, must be reviewed and receive a recommendation by the OSBP⁹ ... prior to being advertised. The Acquisition Screening and Review Form DL 1–2004 shall be used for this purpose and the statement of work and market survey documentation shall be submitted to Office of Small Business Programs with the request for review.

The AMD Director and a former OSBP official stated that MSHA and OSBP had modified this requirement through an informal agreement in 2006 because MSHA had outperformed its small business goals. Under the verbal agreement, OSBP required MSHA to submit only open market contracts that MSHA did not set aside for small business participation.

⁹ On March 1, 2010, OSBP was reorganized into the Office of Small and Disadvantaged Business Utilization.

Neither OSBP nor MSHA had the authority to modify existing Departmental procurement requirements. In addition, MSHA still routinely violated the less stringent provisions of this informal agreement. Fourteen of the 38 contracts in the audit sample were open market contracts that were awarded to large businesses. So even under the informal agreement, MSHA should have provided these contracts to OSBP for review. However, MSHA did not complete the Acquisition Screening and Review Form or obtain an OSBP review of any of these contracts (see Exhibit 1).

MSHA agreed that, even under the supposed informal agreement, 10 of the 14 contracts should have been referred to OSBP for review, but that the remaining 4 actions did not require OSBP review because they were sole source procurements. However, the regulation, as cited above, contains no exception for sole source contracts. Effective March 1, 2010, the Office of Small and Disadvantaged Business Utilization required MSHA to prepare and submit a DL 1-2004 form for all contacts that meet the DOLAR requirement.

By not obtaining the required OSBP review of proposed contracts as required, MSHA did not assure that small businesses received maximum opportunities to participate in the award.

Overall, MSHA lacked adequate controls, including appropriate management oversight, to assure that its contracting personnel complied with procurement regulations and procedures. The AMD Director only reviewed a sample of contracts prior to award and his supervisor, the A&M Director, did not review any contracts. As a result, restrictions on competition and small business opportunities were not justified or supported.

Finding 2 — MSHA generally did not follow established procurement procedures.

In 47 percent¹⁰ of contracts between \$25,000 - \$100,000 and 24 percent of contracts above \$100,000, MSHA did not follow procurement procedures specified in the DOLAR, the DLMS, and an MOA with the Department's SOL. Specifically, our review of 88 contracts identified 46 instances in 33 contracts¹¹ in which MSHA did not follow the MOA with the SOL (16 instances); obtain ASAM approval prior to awarding advisory and assistance contracts (4 instances); obtain conflict of interest certifications for sole source or advisory and assistance contracts (9 instances); or complete the Simplified Acquisition Documentation Checklist (17 instances). (See Exhibit 2 for a summary of deficiencies identified in each of the 33 contracts.)

These deficiencies occurred because MSHA's contracting officers either did not know of, did not understand, or misinterpreted the regulatory and policy requirements, and the

¹⁰ The projected result of the statistical sample, at a 95 percent confidence level, ranges between 38 percent and 57 percent.

¹¹ Some contracts in the sample demonstrated more than one deficiency.

AMD Director did not provide adequate supervisory oversight prior to contract awards. As a result, there is no assurance that MSHA properly awarded these contracts.

MOA between MSHA and the SOL was not being followed.

Under terms of an MOA, MSHA was required to submit solicitations and pre-award packages meeting specified criteria to the Department's SOL for review prior to finalizing a contract. MSHA awarded all 16 contracts in the audit sample that met the specified MOA criteria without submitting them for SOL review as required (as shown in Exhibit 2). As a result, there was an increased risk that complex, high-dollar contracts were not properly awarded.

In April 2006, to address procurement concerns raised in a prior OIG audit report¹², MSHA established procedures under which SOL would review MSHA solicitations prior to issuance and pre-award packages prior to award for:

- All solicitations and pre-awards for information technology contracts greater than \$100,000 in total contract value;
- All solicitations and pre-awards for large, multi-year service contracts greater than \$500,000. (Examples are Guard and Food Services at the Mine Academy);
- All solicitations and pre-awards for special security services, such as background investigation services, or contracts relating to continuing operations greater than \$100,000;
- Any termination of a contract before the termination becomes effective, except in emergency mine rescue situations;
- All advisory and assistant contracts; and
- All non-GSA sole source procurements above \$50,000.

The MOA stated that MSHA would not finalize any contract until SOL's review was completed and it would maintain a copy of the results of the SOL review in the associated contract file.

However, although 16 of the contracts in the audit sample met the MOA criteria, none of the contract files contained evidence of the required SOL review. MSHA stated that only 5 of the 16 contracts required SOL review and offered various explanations as to why the other 11 were exempt from the MOA. For example:

- MSHA stated that two of the contracts had been reviewed by the PRB, and therefore, based on a verbal agreement with SOL, did not require separate SOL review. However, SOL denied that any such agreement existed and stated that a PRB review did not substitute for the required SOL review.
- MSHA stated that four of the contracts were purchases against existing contracts (e.g., a contract awarded by another federal agency), and were therefore,

¹² *Mine Safety and Health Administration Procurements Showed a Pattern of Disregard for Federal and DOL Acquisition Rules and Requirements.* (Report No. 25-05-001-06-001, October 29, 2004)

exempt from the MOA. However, the MOA contains no language that exempts pre-existing contracts from SOL review.

SOL agreed that all 16 contracts should have been sent to it for review.

The current MOA process has no control to assure that contracts meeting the MOA criteria are, in fact, submitted to SOL for review. As a result, the MOA is ineffective in meeting its stated purpose of “reducing overall risk to the agency and Department.”

ASAM approvals were not obtained.

MSHA awarded four advisory and assistance contracts without the required ASAM approval. In responding to our inquiries, MSHA did not provide any explanation for not obtaining ASAM approval. By awarding advisory and assistance contracts without ASAM’s approval, the contracting officers violated MSHA’s independent contracting authority.

DLMS-2, Chapter 814, lists the DOL agencies with independent contracting authority and each agency’s respective delegated authority and responsibilities. DLMS-2, Chapter 817, lists exclusions to this delegated authority. Specifically, DLMS-2, Chapter 817(A1), states:

The ASAM retains authority and responsibility for approval of requests for contracted advisory services for individuals and organizations ... when acquisitions by either contract or purchase order are to be awarded without competition, regardless of amount, or for those competitive actions costing \$50,000 or more.

MSHA awarded all four contracts in the audit sample that met the exclusion criteria without evidence of the ASAM’s approval (as shown in Exhibit 2).

Advisory & Assistance Contracts Awarded Without ASAM Approval

Contract #	Competed?	Contract Value	Evidence of ASAM Approval
DOLB09MR20643	No	\$100,000	No
DOLB09MR20637	No	\$50,000	No
DOLJ094R22465	Yes	\$87,500	No
DOLJ094R22516	Yes	\$175,000	No

Conflict of interest certifications were not obtained.

MSHA had not obtained conflict of interest certifications from program officials for 9 of 13 contracts in the audit sample that required them. These certifications were intended to identify any relationships between program officials and the proposed contract recipient. Because MSHA had not obtained conflict of interest certifications prior to awarding these contracts, it had no assurance that they were properly awarded.

DLMS-2, Chapter 835A states:

The program office official responsible for an “other than full and open competition” request or a request for contracted advisory and assistance services shall, as part of the request, explain any past or existing business or personal relationships with the proposed recipient or certify that none exist.

Thirteen contracts in the audit sample met the criteria for conflict of interest certification because they were either awarded without competition or because they were advisory and assistance contracts. MSHA had not obtained conflict of interest certifications for 9 of these 13 contracts as shown below:

Contracts Awarded Without Conflict of Interest Certifications					
Contract #	Contract Value	Competed?	Advisory & Assistance?	Conflict of Interest Certification?	
1	DOLB084R21987	\$ 64,875	No	No	No*
2	DOLB084R22093	\$ 27,221	No	No	No
3	DOLB09MR20643	\$100,000	No	Yes	Yes
4	DOLB09MR20637	\$ 50,000	No	Yes	Yes
5	DOLB094R22313	\$ 27,783	No	No	No
6	DOLB094R22346	\$ 41,470	No	Yes	No*
7	DOLJ094R22371	\$132,800	No	No	No*
8	DOLJ094R22465	\$ 87,500	Yes	Yes	No
9	DOLJ094R22403	\$159,480	No	No	No*
10	DOLJ09MR20672	\$ 38,400	No	No	Yes
11	DOLJ094R22516	\$175,000	Yes	Yes	No
12	DOLJ094R22554	\$155,653	No	No	No
13	DOLB094R22590	\$ 52,500	No	No	Yes

* Subsequent to our audit work and after the contract had been completed, MSHA obtained a signed conflict of interest certification from a program official for these contracts.

MSHA concurred that the contracting officers had not obtained certifications for 6 of the 9 contracts (Items 1, 2, 5, 6, 7, and 9). For two contracts (Items 8 and 11), MSHA provided signed conflict of interest certifications for prior contracts with the same contractor. This does not satisfy the DLMS requirement. For the final contract (Item 12), MSHA stated that a conflict of interest certification was not required because the contract was a purchase related to a pre-existing contract. However, this action was processed as a separate contract, not a modification of a prior contract.

Simplified Acquisition Documentation Checklists (DL 1-2216) were not properly maintained.

For awards below the simplified acquisition threshold of \$100,000, 17 of 50 contract files had incomplete simplified acquisition checklists. The checklist must be completed and certified by a contracting officer because it supports the decisions made by the contracting officer.

DOLAR 2953.101 provides a Simplified Acquisition Documentation Checklist (DL 1–2216) that all contracting officers must use to document all simplified acquisitions at or below the simplified acquisition threshold. Furthermore, a 2006 OIG audit report¹³ examined whether DOL agencies with independent contracting authority procured supplies and services through the GSA Schedules Program in accordance with prescribed rules and regulations and found no evidence that MSHA’s contracting officers were checking required sources before making GSA schedule procurements. In response to the audit recommendations, OASAM responded they would require all DOL contracting officers to use the revised Form DL 1-2216 by the first quarter of FY 2007.

Fifty contracts in the audit sample were at or below the simplified acquisition threshold (\$100,000). MSHA contracting officers did not complete Simplified Acquisition Documentation Checklists for 17 of these 50 contracts as shown in Exhibit 3.

MSHA could not demonstrate that it made the best decisions in awarding contracts to carry out its activities. MSHA has not followed the procedural reforms it put into place as corrective actions in response to previous OIG audit reports. As a result, the procurement weaknesses identified in the 2004 and 2006 OIG reports are still present.

RECOMMENDATIONS

We recommend that the Assistant Secretary for Mine Safety and Health Administration:

1. Ensure MSHA procurement officials comply with procedures for PRB review and CAO approval as required by DOL policy.
2. Require the Director of A&M to document, prior to final contract award, supervisory review of all contracts awarded without full and open competition, all contracts with a value of \$100,000 or more, and a representative sample of contracts valued from \$25,000 – \$100,000;
3. Define and implement a program to provide refresher training on procurement requirements contained in the FAR, DOLAR, and DLMS to all MSHA contracting personnel at least annually; and

¹³ Report Number 05-06-004-07-001, There Is No Evidence Contracting Officers Are Checking Required Sources before Making GSA Schedule Procurements

4. Develop and implement controls to track AMD's compliance with the provisions of the MOA with the Department's SOL.

We appreciate the cooperation and courtesies that MSHA personnel extended to the Office of Inspector General during this audit. OIG personnel who made major contributions to this report are listed in Appendix E.



Elliot P. Lewis
Assistant Inspector General
for Audit

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Exhibits

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Exhibit 1

Contracts Awarded Without Full and Open Competition

Contract #	Date Issued	Amount (\$)	Missing Adequate Sole Source Justification	No PRB Review and CAO Approval	Sole Source and Not Synopsized	Competed and Not Synopsized	Missing DL 1-2004 and OSBP Review
SAMPLE 1							
1	DOLB094R22313*	11/06/08			Yes		
2	DOLB084R22044	06/20/08				Yes	
3	DOLJ09MR20672*	04/01/09	Yes		Yes		
4	DOLB094R22346*	11/17/08			Yes		
5	DOLB09MR20637*	10/01/08	Yes				
6	DOLB094R22590*	08/03/09			Yes		
7	DOLF094R22547	06/09/09	Yes				
8	DOLB084R21987*	05/05/08			Yes		
9	DOLB09MR20643*	10/01/08	Yes				
Total Amount¹		457,595					
Total Exceptions			4	0	5	1	0
Total Contracts			11	3	7	12	0
Total Exceptions (% of Total)			36%	0%	71%	8%	0%
SAMPLE 2							
1	DOLJ094R22628	09/24/09				Yes	
2	DOLF094R22588	07/29/09					Yes
3	DOLJ094R22371*	12/01/08	Yes	Yes			Yes
4	DOLJ094R22521	05/12/09					Yes
5	DOLJ094R22613	09/08/09					Yes
6	DOLJ094R22554*	06/12/09	Yes	Yes	Yes		Yes
7	DOLJ094R22403*	03/07/09	Yes	Yes	Yes		Yes
8	DOLJ094R22516*	06/01/09		Yes			
9	DOLF094R22471	03/24/09	Yes				Yes
10	DOLJ084R22085	08/13/08					Yes
11	DOLF084R21975	04/22/08	Yes				Yes
12	DOLF09MR20693*	09/30/09					Yes
13	DOLF084R21971	04/18/08	Yes				Yes
14	DOLJ084R21968	04/18/08				Yes	Yes
15	DOLF094R22386	12/10/08	Yes				Yes
16	DOLF094R22528	05/14/09	Yes				Yes
Total Amount¹		3,175,079					
Total Exceptions			8	4	2	2	14
Total Contracts			8	5	2	9	14
Total Exceptions (% of Total)			100%	80%	100%	22%	100%

*These twelve (12) contracts also have a deficiency in Finding 2. See Exhibit 2.

¹ Total amounts have been rounded to the nearest dollar.

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Exhibit 2

Contracts Where MSHA Did Not Follow General Procurement Procedures

Contract #	Date Issued	Amount (\$)	No SOL Review	No ASAM Approval	No COI Certification	Incomplete DL 1-2216
SAMPLE 1						
1	DOLB094R22231	10/20/08	25,000			Yes
2	DOLB084R22014	05/23/08	26,031			Yes
3	DOLF084R22042	06/17/08	26,562			Yes
4	DOLB084R22093	08/20/08	27,221		Yes	
5	DOLB094R22313*	11/06/08	27,783		Yes	
6	DOLB094R22603	08/28/09	28,397			Yes
7	DOLB084R22049	06/24/08	28,655			Yes
8	DOLF094R22573	07/10/09	29,576			Yes
9	DOLF084R22078	08/04/08	33,416			Yes
10	DOLB094R22228	10/18/08	37,500			Yes
11	DOLJ09MR20672*	04/01/09	38,400			Yes
12	DOLF094R22468	03/18/09	41,020	Yes		
13	DOLB094R22346*	11/17/08	41,470		Yes	
14	DOLF094R22562	07/07/09	42,654	Yes		
15	DOLB09MR20637*	10/01/08	50,000	Yes	Yes	Yes
16	DOLB094R22590*	08/03/09	52,500	Yes		
17	DOLF094R22594	08/04/09	55,757			Yes
18	DOLB084R21987*	05/05/08	64,875	Yes		Yes
19	DOLF084R22086	08/13/08	69,660			Yes
20	DOLJ094R22465	03/01/09	87,500	Yes	Yes	Yes
21	DOLB094R22618	09/18/09	89,639			Yes
22	DOLB08MR20613	05/22/08	94,225			Yes
23	DOLB084R22043	06/18/08	95,040			Yes
24	DOLB09MR20643*	10/01/08	100,000	Yes	Yes	Yes
Total Amount¹		1,212,882				
Total Exceptions			7	3	5	17
Total Contracts			7	3	9	50
Total Exceptions (% of Total)			100%	100%	56%	34%
SAMPLE 2						
1	DOLJ094R22371*	12/01/08	132,800	Yes		Yes
2	DOLB09MR20654	12/30/08	150,825	Yes		
3	DOLJ094R22554*	06/12/09	155,653	Yes		Yes
4	DOLJ094R22403*	03/07/09	159,480	Yes		Yes
5	DOLF09MR20684	06/26/09	163,050	Yes		
6	DOLJ094R22516*	06/01/09	175,000	Yes	Yes	Yes
7	DOLJ084R22121	09/25/08	182,665	Yes		
8	DOLB08MR20629	12/03/08	218,505	Yes		
9	DOLF09MR20693*	09/30/09	244,400	Yes		
Total Amount¹		1,582,378				
Total Exceptions			9	1	4	0
Total Contracts			9	1	4	0
Total Exceptions (% of Total)			100%	100%	100%	0%

* These twelve (12) contracts also have a deficiency in Finding 1. See Exhibit 1.

¹ Total amounts have been rounded to the nearest dollar.

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Exhibit 3

Contracts with Incomplete DL 1-2216

Contract #	Amount (\$)	Checklist Items Not Completed	
1	DOLB084R21987	64,875	<ul style="list-style-type: none"> ▪ Part II, Pricing Memorandum ▪ Part IV, Large Business Documentation
2	DOLB08MR20613	94,225	<ul style="list-style-type: none"> ▪ Part I-A, Item 1 Excess supply and inventory ▪ Part I-A, Item 2 Consulted required sources
3	DOLB084R22014	26,031	<ul style="list-style-type: none"> ▪ Sec. B, Item 1 Required source checked ▪ Sec. B, Item 2 Excess inventory checked ▪ Sec. B, Item 7 No reason selected for using a large business
4	DOLF084R22042	26,562	<ul style="list-style-type: none"> ▪ Part III, Sole Source Documentation
5	DOLB084R22043	95,040	<ul style="list-style-type: none"> ▪ Part I-B, Item 2 Small business set aside
6	DOLB084R22049	28,655	<ul style="list-style-type: none"> ▪ Sec. B, Item 7 No reason selected for using "other than small business"
7	DOLF084R22078	33,416	<ul style="list-style-type: none"> ▪ Sec. B, Item 1 Required source checked ▪ Sec. B, Item 2 Excess inventory checked (no explanation of "N/A" selection) ▪ Sec. B, Item 7 No reason selected for using a large business"
8	DOLF084R22086	69,660	<ul style="list-style-type: none"> ▪ Sec. B, Item 1 Required source checked (no explanation of "N/A" selection) ▪ Sec. B, Item 2 Excess inventory checked (no explanation of "N/A" selection)"
9	DOLB09MR20643	100,000	<ul style="list-style-type: none"> ▪ Sec. B, Item 1 Required source checked (no explanation of "N/A" selection) ▪ Sec. B, Item 2 Excess inventory checked (no explanation of "N/A" selection)"
10	DOLB09MR20637	50,000	<ul style="list-style-type: none"> ▪ Sec. B, Item 1 Required source checked (no explanation of "N/A" selection) ▪ Sec. B, Item 2 Excess inventory checked (no explanation of "N/A" selection)"
11	DOLB094R22228	37,500	<ul style="list-style-type: none"> ▪ Sec. B, Item 2 Excess inventory checked
12	DOLB094R22231	25,000	<ul style="list-style-type: none"> ▪ Sec. B, Item 1 Required source checked ▪ Sec. B, Item 2 Excess inventory checked ▪ Sec. B, Item 7 No reason selected for using a large business"
13	DOLJ09MR20672	38,400	<ul style="list-style-type: none"> ▪ Part IV Large Business Documentation
14	DOLF094R22573	29,576	<ul style="list-style-type: none"> ▪ Part I-A, Item 1 Excess supply and inventory ▪ Part I-A, Item 2 Consulted required sources ▪ Part I-A, Item 4 Quotations, clearances, and approvals ▪ Part I-B, Item 2 Small business set aside"
15	DOLF094R22594	55,757	<ul style="list-style-type: none"> ▪ Part I-A, Item 1 Excess supply and inventory ▪ Part I-A, Item 2 Consulted required sources ▪ Part I-A, Item 4 Quotations, clearances, and approvals ▪ Part I-B, Item 2 Small business set aside"
16	DOLB094R22603	28,397	<ul style="list-style-type: none"> ▪ Part IV Large Business Documentation
17	DOLB094R22618	89,639	<ul style="list-style-type: none"> ▪ Sec. B, Item 1 Required source checked ▪ Sec. B, Item 2 Excess inventory checked

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Appendices

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Appendix A**Background**

The DOL MSHA helps in reducing deaths, injuries, and illnesses in the Nation's mines with a variety of activities and programs. The agency develops and enforces safety and health rules applying to all U.S. mines; helps mine operators with special compliance problems; and makes available technical, educational, and other types of assistance. MSHA also works cooperatively with industry, labor, and other Federal and state agencies toward improving safety and health conditions for all miners. MSHA's responsibilities are spelled out in the Mine Act and amended by the Mine Improvement and New Emergency Response Act (MINER Act). These acts apply to all U.S. mining and mineral processing operations.

In DOL, OASAM, through the Department's Procurement Executive, is responsible for implementing the Department's procurement program and ensuring that the program is performing in accordance with the appropriate laws and regulations. The Department's procurement program is a decentralized structure with OASAM, MSHA, the Employment and Training Administration, the Bureau of Labor Statistics, and the OIG having their own procurement authority. MSHA is delegated authority and responsibility for contracting for all program property and services.

From April 1, 2008, to September 30, 2009, MSHA's contracts totaled 1,648 and were valued at approximately \$36 million.

MSHA's A&M provides administrative and management advice, products, and services to assist the Office of the Assistant Secretary in implementing the Mine Act and the MINER Act. The Director of A&M is the Head of Contracting Activity for MSHA, and has the overall responsibility for managing contracting activity. The AMD is a division within A&M responsible for procurement and contracting. Contracting officers are responsible for all stages of a contract, including pre-award, award, post-award, administration, and close out. AMD has contracting officers and purchase agents located at MSHA's headquarters in Arlington, Virginia, and in the National Mine Health and Safety Academy in Beaver, West Virginia.

Past OIG audit work has identified weaknesses in MSHA's procurement and contracting function. A 2004 report concluded that MSHA consistently demonstrated a lack of regard for FAR principles and that MSHA fostered an environment that allowed, or at the very least had the appearance of allowing, best value through competition to be replaced with awarding contracts based on favoritism or convenience. To address the findings raised in the 2004 audit report, MSHA and the SOL entered into a 5-year MOA, dated April 5, 2006, which established procedures under which SOL will review MSHA solicitations and contract awards that are complex or of a high dollar value. Moreover, a 2006 report examined whether DOL agencies with independent contracting authority procured supplies and services through the GSA Schedules Program in accordance with prescribed rules and regulations concluded that MSHA's contracting officers were not checking required sources before making GSA schedule procurements. Finally, a

2008 report that examined sole source procurements by DOL agencies with independent contracting authority identified several weaknesses in MSHA's awarding of non-competitive procurement actions.

Appendix B**Objective, Scope, Methodology, and Criteria**

Objective

The OIG conducted the audit to determine whether MSHA complied with appropriate procurement regulations and procedures in awarding contracts.

Scope

The audit examined selected MSHA contracts awarded from April 1, 2008, through September 30, 2009. We considered whether internal controls significant to the awarding of contracts were properly designed and placed in operation. We confirmed our understanding of these controls and procedures through interviews and a review of contracts.

Of the 1,648 contracts totaling \$36 million awarded by MSHA during this period, we eliminated contracts valued at \$25,000 or less and modifications. The remaining procurement actions totaled 133 and were valued at approximately \$16 million.

Fieldwork was conducted at MSHA's headquarters located in Arlington, Virginia, and the National Mine Health and Safety Academy located in Beaver, West Virginia.

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 objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Methodology

To accomplish our objective, we obtained an understanding of MSHA's procurement procedures for contract awarding. We identified significant risks in contracting that can result in violations of Federal and DOL laws and regulations. We then interviewed MSHA officials from A&M, the Director of AMD, contracting officers and purchasing agents, and SOL personnel to determine whether MSHA had internal controls in place to mitigate contracting risks, the likelihood of the contracting risks, and the impact of the contracting risks. We also reviewed criteria for awarding contracts in the FAR, DOLAR, the DLMS, and the MOA between MSHA and the SOL, and the Partnership Agreement for 8(a) contracts between SBA and DOL.

In performing the audit, MSHA provided us with a Federal Procurement Data System-Next Generation (FPDS-NG) report as of November 4, 2009. We performed a data reliability assessment to ensure we have complete and accurate procurement data. To determine whether the data was reliable to select our sample, we compared the

FPDS-NG procurement data reports MSHA provided us with a report OASAM provided us. We did note a few differences, but the differences were not material for the purpose of selecting a sample of contracts to review. We concluded the data to be sufficiently reliable for our purposes.

To determine whether MSHA awarded contracts in accordance with procurement procedures and if the procurement files contained the required documentation and an appropriate level of management oversight, we reviewed a random stratified statistical sample of contract files. Our review focused on actions \$25,000 and above awarded from April 1, 2008, through September 30, 2009. In addition to excluding contracts valued below \$25,000, we also excluded actions with no obligation made, actions with a negative obligation, and modifications. The remaining contracts totaled 133 and were valued at approximately \$16 million.

Different Federal and DOL procurement rules and regulations apply to contracts below and above \$100,000. As a result, we stratified the 133 contracts into two strata based on the obligation amount. Stratum One consisted of 95 contracts with award values between \$25,000 - \$100,000. We randomly selected 50 contracts from Stratum One. The results of this sample were projected to the population. Stratum Two consisted of contracts with award values above \$100,000 and we selected all 38 contracts for review.

For contracts at or below the simplified acquisition threshold (currently \$100,000), we verified that the actions were awarded in accordance with simplified acquisition procedures and other agreements (e.g., MOA and the Partnership Agreement with the SBA). For contracts above the simplified acquisition threshold, we reviewed the following areas:

- Purchase request, acquisition planning information, and other pre-solicitation documentation;
- SOL's review for each complex or high dollar contract;
- Justifications (e.g., Justifications for other than full and open competition) and approvals (e.g., PRB review and CAO approval, ASAM approval, etc.);
- The list of sources solicited and selected;
- A copy of the solicitation and amendments (if any);
- Contractor's representations and certifications;
- Cost or price analysis; and
- The original signed contract or award.

We evaluated internal controls used by MSHA for reasonable assurance that AMD complied with appropriate procurement regulations and procedures in awarding contracts. Our consideration of MSHA's internal controls for procurement procedures related to awarding contracts would not necessarily disclose all matters that might be reportable conditions. Because of inherent limitations in internal controls, misstatements, or losses, noncompliance may nevertheless occur and not be detected.

Criteria

Federal Acquisition Regulation

The Code of Federal Regulations, Title 48, Federal Acquisition Regulations System, Volume 7, Chapter 29 Department of Labor

Department of Labor Manual Series

06-MOU-082, Memorandum of Agreement between MSHA and SOL, effective April 5, 2006

Partnership Agreement between the Small Business Administration and DOL

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Appendix C**Acronyms and Abbreviations**

A&M	Directorate of Administration & Management
AMD	Acquisitions Management Division
ASAM	Assistant Secretary for Administration and Management
CAO	Chief Acquisition Officer
DLMS	Department of Labor Manual Series
DOL	Department of Labor
DOLAR	Department of Labor Acquisition Regulation
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System-Next Generation
GPE	Governmentwide Point of Entry
GSA	General Services Administration
MOA	Memorandum of Agreement
Mine Act	Federal Mine Safety and Health Act of 1977
MINER Act	Mine Improvement and New Emergency Response Act
MSHA	Mine Safety and Health Administration
OASAM	Office of the Assistant Secretary for Administration and Management
OIG	Office of Inspector General
OSBP	Office of Small Business Programs
PRB	Procurement Review Board
SOL	Office of the Solicitor

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Appendix D

MSHA's Response to Draft Report

U.S. Department of Labor

Mine Safety and Health Administration
1100 Wilson Boulevard
Arlington, Virginia 22209-3939



JAN 28 2011

MEMORANDUM FOR ELLIOT P. LEWIS
Assistant Inspector General for Audit

FROM: JOSEPH A. MAIN 
Assistant Secretary of Labor for
Mine Safety and Health

SUBJECT: MSHA Response to Draft Audit Report
No. 06-11-001-06-001 --
"MSHA's Controls Over Contract Awards Need
Strengthening"

Thank you for the opportunity to review the Office of Inspector General (OIG) draft audit report "MSHA's Controls Over Contract Awards Need Strengthening" (Draft Audit Report No. 06-11-001-06-001) on Mine Safety and Health Administration (MSHA) procurement practices. As noted below, MSHA already has begun to implement a number of the report's recommendations. We are using the report to continue our efforts to direct meaningful and lasting improvements to procurement procedures and to strengthen program management and oversight.

We agree that additional management controls and oversight would strengthen accountability. However, we would like to reiterate MSHA's longstanding commitment to a robust procurement program that provides both opportunities for small business and a successful competitive environment that maximizes value for the government. In each of Fiscal Years 2008, 2009, and 2010, MSHA awarded more than 70 percent of all procurement dollars spent to small businesses. In addition, MSHA exceeded the small business goals established by the Department of Labor's Office of Small Business Programs (OSBP) for the period covered by the audit. In fact, MSHA has exceeded its small business goals for the past seven years and has one of the highest set-aside goals in the Department of Labor.

In response to the audit, MSHA is taking aggressive action to review its procurement program, identify lapses, and correct them. For each of the contracts with deficiencies identified in the OIG draft audit report, MSHA is implementing corrections wherever possible. If corrections cannot be made, AMD will insert documentation in the contract file explaining why the corrective action was not implemented.

You can now file your MSHA forms online at www.MSHA.gov. It's easy, it's fast, and it saves you money!

Below are specific responses to your recommendations.

OIG Recommendation 1: *Ensure MSHA procurement officials comply with procedures for PRB review and CAO approval as required by DOL policy.*

MSHA agrees with this recommendation. MSHA is developing and implementing new management procedures to require concurrence by the contracting officer prior to contract award to determine whether the procurement action is subject to PRB review based upon DOL policy requirements, and if so, has received PRB review and CAO approval. MSHA also will institute a new monthly tracking report by the Acquisition Management Division (AMD) to the Director of Administration and Management, with quarterly reports to the Office of the Assistant Secretary (OAS) to verify that DOL policy and procedures have been met.

OIG Recommendation 2: *Require the Director of A&M to document, prior to final contract award, supervisory review of all contracts awarded without full and open competition, all contracts with a value of \$100,000 or more, and a representative sample of contracts valued from \$25,000 - \$100,000.*

MSHA agrees with this recommendation. MSHA will implement new management procedures to require two levels of supervisory review of all contracts awarded without full and open competition and all contracts with a value of \$100,000 or greater. MSHA will develop and implement a sampling methodology for the two-level supervisory review of a sample of contracts valued from \$25,000 - \$100,000. Such first-level reviews will be conducted by the AMD Director, and a second-level review will be conducted by Deputy Director of A&M. Until the Deputy Director position is filled, the Director of A&M will conduct the second-level review. The reviews will be documented.

OIG Recommendation 3: *Define and implement a program to provide refresher training on procurement requirements contained in the FAR, DOLAR, and DLMS to all MSHA contracting personnel at least annually.*

MSHA agrees with this recommendation. We are aware that procurement requirements change frequently, and we are fully committed to maintaining a highly skilled cadre of contracting personnel that is trained in the latest procurement requirements.

Currently, all MSHA Contracting Officers are taking training to achieve FAC-C Level II certification. The FAR requirements are covered as part of FAC-C Level II certification. FAC-C Level II training for MSHA personnel is currently being reported to the Department's Office of the Assistant Secretary for Administration and Management as it occurs on a time table acceptable to the Assistant Secretary for Administration and Management.

3

In addition, in response to MSHA's request OASAM has agreed to provide specific, targeted training on appropriations law requirements, the DOLAR, and the DLMS during the second quarter of FY 2011. This training will address the deficiencies identified in the draft audit report and will be mandatory for all Agency acquisition personnel. In addition, refresher training will take place annually.

OIG Recommendation 4: *Develop and implement controls to track AMD's compliance with the provisions of the MOA with the Department's SOL.*

MSHA agrees with this recommendation. We have agreed with the Office of the Solicitor (SOL) to extend the existing Memorandum of Agreement (MOA) for three years, with adjustments to clarify points of confusion or previous conflicts in interpretation, and to respond to specific changes in the procurement process (e.g., an increase in the Simplified Acquisition Threshold) that have taken place since the original MOA. By improving clarity and deleting vague terms that had been subject to different interpretations by MSHA and SOL, the new MOA will facilitate compliance.

As noted above, MSHA will institute a new monthly tracking report by the Acquisition Management Division (AMD) to the Director of Administration and Management, with quarterly reports to the Office of the Assistant Secretary (OAS) to track AMD compliance with DOL policy and procedures, including the MOA with the Department's SOL.

Conclusion

MSHA appreciates the significant time that the OIG staff has dedicated to reviewing its procurement program and preparing the draft report. The OIG recommendations and planned management actions in response will improve the effectiveness and accountability of contracting in MSHA.

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Appendix E

Acknowledgements

Key contributors to this report were Charles Allberry, Michael Kostrzewa, Richard Donna Jr., Ann Marie Lawrence, Kathleen Mitomi, Elizabeth Garcia, and Ajit Buttar.

TO REPORT FRAUD, WASTE OR ABUSE, PLEASE CONTACT:

Online: <http://www.oig.dol.gov/hotlineform.htm>
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Telephone: 1-800-347-3756
202-693-6999

Fax: 202-693-7020

Address: Office of Inspector General
U.S. Department of Labor
200 Constitution Avenue, N.W.
Room S-5506
Washington, D.C. 20210