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ADMINISTRATION AND
MANAGEMENT



DEPARTMENT OVERSIGHT NEEDS TO BE STRENGTHENED TO MINIMIZE PROCUREMENT RISK

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BRIEFLY...

Highlights of Report Number 17-12-002-07-711,
issued to the Assistant Secretary for
Administration and Management.

WHY READ THE REPORT

DOL's procurement program has been an OIG top management challenge and remains a concern for the OIG. Recent OIG reports found that the Mine Safety and Health Administration and Office of Job Corps could not demonstrate their procurement processes complied with the Federal Acquisition Regulation (FAR). In Fiscal Year (FY) 2010, DOL awarded 4,291 contracts and purchase orders totaling approximately \$508 million, and issued 5,615 contract and purchase order modifications totaling approximately \$1.7 billion.

WHY OIG CONDUCTED THE AUDIT

The audit objective was to answer the following question:

To what extent did DOL ensure contracts were awarded based on the best value to the government and contract modifications were issued within the terms of initial contracts?

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/2012/17-12-002-07-711.pdf>

March 2012

DEPARTMENT OVERSIGHT NEEDS TO BE STRENGTHENED TO MINIMIZE PROCUREMENT RISK

WHAT OIG FOUND

We could not always determine that the Department's procurement actions were proper. For 4 of the 67 contracts we reviewed, DOL could not produce documentation that it awarded contracts based on the best value to the government. Furthermore, for 5 of the 68 contract modifications we reviewed DOL could not produce documentation that it issued contract modifications within the scope of work and terms of the initial contracts. Based on our sample results, we estimated that as much as \$1.3 million in contracts awards and \$21.8 million in contract modifications may have similar documentation problems.

The Department also could not demonstrate through documentation that it complied with the FAR or DOL requirements for checking the Excluded Parties List System, obtaining conflict of interest certifications, and performing a higher level of review for a number of awards. The Department had not recently updated its procurement regulations and guidance or developed standardized procurement procedures. In addition, the Department has never conducted a procurement review of the agency with the largest volume of procurement activity. Furthermore, the majority of procurement reviews the Department conducted occurred in FY 2006 or prior.

WHAT OIG RECOMMENDED

We recommended that the Assistant Secretary for Administration and Management update DOL's procurement regulations and guidance and develop standardized procurement procedures using the *Standards for Internal Control in the Federal Government* and input from component agency officials.

The Department agreed to take appropriate action to update Department-wide procurement policies and procedures. However, it did not agree with our assessment of the potential risk to the integrity of the procurement process.

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U.S. Department of Labor

Office of Inspector General
Washington, D.C. 20210



March 30, 2012

Assistant Inspector General's Report

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The Federal Acquisition Regulation (FAR) requires that Chief Acquisition Officers (CAO) have overall responsibility for agency performance of procurement activities and procurement programs, which includes monitoring for performance in accordance with appropriate laws and regulations. The FAR also requires that Senior Procurement Executives, if designated, report directly to the CAO without intervening authority. In addition, the Department of Labor (DOL) is responsible for complying with the *Standards for Internal Control in the Federal Government* (Standards), which provides the overall framework for establishing and maintaining internal control and for identifying areas at greatest risk of fraud, waste, abuse, and mismanagement.¹ Secretary's Order 2-2009 provides that the Assistant Secretary for Administration and Management (OASAM) is the DOL CAO and, with the exception of the Office of Inspector General (OIG), is responsible for providing oversight for all DOL procurement activities, including delegating contracting officers (CO) the authority to procure goods and services. DOL's Deputy Assistant Secretary for Operations is the DOL Senior Procurement Executive and is responsible for prescribing procurement policies, procedures and standards, and performing monitoring activities.

Within DOL, acquisition authority is decentralized among OASAM, Employment and Training Administration (ETA), Bureau of Labor Statistics (BLS), Mine Safety and Health Administration (MSHA), and OIG. DOL's procurement program has been an OIG top management challenge and remains a concern for the OIG. Recent OIG reports found that MSHA and the Office of Job Corps (Job Corps) could not demonstrate through documentation that their procurement processes complied with the FAR; therefore, we excluded them from this report in order to provide coverage of the other component agencies' procurement activity.² In Fiscal Year (FY) 2010, DOL awarded 4,291 contracts and purchase orders totaling approximately \$508 million, and issued 5,615

¹ U.S. Government Accountability Office, *Standards for Internal Control in the Federal Government* (GAO/AIMD-00-21.3.1), November 1999.

² *MSHA's Controls Over Contract Awards Need Strengthening*, 05-11-001-06-001 (February 16, 2011). *Transfer of Job Corps Program Strengthened Procurement Processing but Improvements are Needed to Ensure Fair and Open Competition*, 04-08-003-01-370 (September 30, 2008).

contract and purchase order modifications totaling approximately \$1.7 billion. Of the FY 2010 awards within our audit scope, BLS, ETA, and OASAM awarded 141 contracts totaling approximately \$58.8 million, and issued 301 contract modifications totaling approximately \$183 million. Of these contracts and contract modifications, DOL funded \$12.6 million and \$3.3 million, respectively, under the American Recovery and Reinvestment Act of 2009 (ARRA).

Our audit objective was to answer the following question:

To what extent did DOL ensure contracts were awarded based on the best value to the government and contract modifications were issued within the terms of initial contracts?

We reviewed relevant laws, regulations, internal controls, agency guidance, and supplemental documents relevant to DOL procurement practices that were in effect during FY 2010. We reviewed a statistical sample of 67 FY 2010 contracts awarded and 68 FY 2010 contract modifications issued by BLS, ETA, and OASAM, as well as eight contract modifications that MSHA issued to a suspended contractor.³

We conducted this audit in accordance with generally accepted government auditing standards for performance audits. 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.

RESULTS IN BRIEF

In our review of 67 contracts, we determined that DOL could not demonstrate through documentation that component agencies awarded 4 contracts based on the best value to the government. Component agencies could not demonstrate documentation of price reasonableness for three contracts and for a fourth, the component agency could not justify the contractor selected. Based on our sample, OIG estimated that as much as \$1.3 million out of \$58.8 million in our universe of DOL contracts may lack documentation to support the awards.⁴

Through our review of 68 contract modifications, we determined that DOL could not demonstrate through documentation that component agencies issued 5 contract modifications within the scope of work and terms of the initial contracts. Component agencies exceeded the contract ceiling for four contract modifications. In addition, one

³ During fieldwork we identified a contractor who performed work at DOL in FY 2010 was on the suspension list. We searched the Department's FY 2010 procurements and identified that MSHA issued 8 contract modifications to that contractor. We found that the MSHA issued 1 of these 8 awards after the contractor was suspended. However, it appears that MSHA did not identify the suspension of the contractor because the suspension information was not entered into EPLS until after MSHA performed EPLS verification.

⁴ See Exhibit 2 and Appendix B for details on data reliability testing and statistical sampling.

of these contract modifications did not have a clear Statement of Work and did not contain evidence of a price reasonableness determination to support the Statement of Work. For a fifth contract, the component agency issued the modification to a contractor for work performed under the direction of a Program Office without the Contracting Officer's (CO) knowledge or consent. Based on our sample, OIG estimated that as much as \$21.8 million out of \$183 million in our universe of DOL contract modifications may lack documentation to support the modifications.⁵

We identified 24 contracts and contract modifications for which the component agencies could not provide documentation that they checked the Excluded Parties List System (EPLS) prior to award.⁶ We independently checked EPLS for the contractors of these 24 awards and found that DOL did not award these contracts and contract modifications to suspended or debarred contractors. We also identified 23 sole source contracts for which the component agencies could not provide documentation that they obtained required conflict of interest certifications and 45 awards for which they could not document a higher level of review.⁷ Furthermore, we identified one sole source contract outside of our statistical sample totaling approximately \$3.5 million where the component agency could not provide documentation for price reasonableness or provide support for the contractor's 8 percent profit.

DOL had not updated its procurement regulations and guidance since 2008, and had not developed detailed and standardized procedures for EPLS, higher level review, and conflict of interest. The existing regulations and guidance regarding EPLS directed the heads of component agencies to provide a system to ensure contracting staff checked EPLS. In addition, DOL's existing regulations and guidance did not address procedures to ensure component agencies provide verification documentation for conflict of interest certifications or documented a higher level of review of contracts and contract modifications. Furthermore, the Senior Procurement Executive's monitoring of DOL procurement activities through its Procurement Management Reviews lacked department-wide coverage.

We recommend that the Assistant Secretary for Administration and Management update DOL's procurement regulations and guidance and develop standardized procurement procedures using the *Standards for Internal Control in the Federal Government* and input from component agency officials.

In response to our draft report, the Department acknowledged that any process can be improved and stated it will take appropriate action to update department-wide policies and procedures. However, the Department expressed concerns about changes to the

⁵ We projected the statistical sample of 68 modifications to the universe of 301 modifications at a 95 percent confidence level. See Exhibit 2 and Appendix B for details on data reliability testing and statistical sampling.

⁶ FAR, Part 2, Subpart 2.101, defines EPLS as "an electronic database maintained and posted by the General Services Administration containing the list of all parties suspended, proposed for debarment, debarred, declared ineligible, or excluded or disqualified under the non procurement common rule by agencies, Government corporations, or by the Government Accountability Office."

⁷ Of these 23 sole source awards, 19 were SBA 8(a) contracts.

audit objective, the validity of OIG's sampling methodology, and the use of internal controls as a basis for the findings in this report.

We disagree with the Department's assertion that we changed our audit objective. We have clarified the wording, but our objective was always to determine if the Department was ensuring the propriety of its procurements. Regarding our sampling methodology, we used a stratified random sampling plan that is considered more efficient than other sampling designs. Our sample was representative of the population we tested, unbiased, and sufficient for the representations we made. We disagree with the Department's statements regarding the use of internal controls as a basis for findings in the report. Internal controls are an inherent aspect of conducting performance audits and are not required to be a stated audit objective.

The Department also provided specific responses to the draft report's findings, emphasizing that the findings were primarily documentation issues and there were no findings of procurement abuse or improperly awarded contracts. However, we note that documentation is critical to the Department's efforts to ensure controls have been followed, and we were unable to make that determination based solely on the information in DOL's records. The issues we identified related to controls over sole source awards, ensuring conflicts of interest do not impair the procurement process, and preventing awards to suspended or debarred contractors. These activities are critical internal controls for procurement. Without proper documentation, the Department is at risk of having improper procurements in the future.

The Department's entire response is included in Appendix D. Where appropriate, we made adjustments to the report based on the response provided by the Department.

RESULTS AND FINDINGS

Objective — To what extent did DOL ensure that contracts were awarded based on the best value to the government and contract modifications were issued within the terms of initial contracts?

The Department's lack of procurement oversight exposed DOL to risk.

Finding 1 — DOL could not demonstrate through documentation that it funded FY 2010 procurements based on best value or within the scope and terms of initial contracts.

Contract Best Value Not Demonstrated Through Documentation

In our review of 67 contracts and 68 contract modifications, we found DOL component agencies could not demonstrate they awarded 4 contracts based on the best value to the government, or issued 5 contract modifications within the scope of work and terms

of initial contract awards. Based on our sample, we estimated there could be as much as \$1.3 million in contracts and \$21.8 million in contract modifications where the Department does not have sufficient documentation to support the award (see Exhibit 2).

Component agencies could not provide documentation that they awarded four contracts based on the best value to the government (see Table 1). Component agencies could not provide price reasonableness documentation for three contracts and for a fourth, the component agency could not justify the contractor selected.

Table 1: 4 Contracts Exceptions

Contract Number	Obligated \$ Amount	Exception
DOLJ109631286	\$39,803	No evidence to support price reasonableness determination.
DOLJ109630857	\$154,980	No evidence to support price reasonableness determination.
DOLJ109630254	\$37,158	No documentation to support price reasonableness.
DOLJ102J14059	\$26,393	Justification did not support award.

Price Reasonableness

Three contracts lacked evidence that the CO had made a determination of price reasonableness.⁸

- Contract #DOLJ109631286 (sole source) lacked adequate documentation of a price reasonableness determination. Though component agency officials provided a Price Negotiation Memorandum to support price reasonableness, they could not provide the Independent Government Cost Estimate (IGCE) alluded to in the Price Negotiation Memorandum as the basis for price reasonableness. In addition, these officials noted they may not have adequately documented the price reasonableness determination.
- Contract #DOLJ109630857 (sole source) lacked an adequate price reasonableness determination. Though component agency officials provided a Memorandum to the File to support price reasonableness, they agreed they may not have adequately documented it.
- Contract #DOLJ109630254 (sole source) did not contain evidence to support price reasonableness.

The FAR specifies a number of CO responsibilities regarding price reasonableness determinations. FAR Part 6 Subpart 6.303-2(7) requires the CO to document the price reasonableness determination for sole source contracts.

⁸ OIG did not assess whether or not the costs associated with these contracts were reasonable.

In its response to the draft report, the Department stated that all of the contracts cited except one had the appropriate price reasonableness documentation. We disagree because the Department did not provide any price reasonableness documentation that would change our determination with respect to these contracts.

Sole Source Justification

One simplified acquisition contract lacked adequate justification documentation for the contractor selected. The justification for contract #DOLJ102J14059 (sole source) cited FAR, Part 6, Subpart 6.302-1, because only one responsible source was available and no other supplies or services satisfied agency requirements. However, the justification pertained to a different contractor. Component agency officials could not provide documentation supporting their assertion or a justification supporting the contractor selected. Instead, they cited a series of emails that we determined did not contain the minimum information required by the FAR to justify the procurement.

In its response to the draft report, the Department stated that this award was justified as the contractor was the exclusive reseller of the product. OIG disagrees that the award was properly justified since the justification referred to the manufacturer and not the reseller, to which the award was made and the contract file did not adequately document that the contractor to whom the award was made was the exclusive reseller.

FAR, Part 13, Subpart 13.106-1(b), allows purchases not exceeding the simplified acquisition threshold to be solicited from one source if the CO determines only one source is reasonably available.⁹ FAR, Part 6, Subpart 6.303-2, requires justifications to contain a number of minimum facts; specifically, FAR, Part 6, Subpart 6.303-2(5), requires the CO to demonstrate that the contractor's "unique qualifications or the nature of the acquisition requires use of the authority cited."

Within Scope Modifications Not Demonstrated Through Documentation

Component agencies could not provide documentation that they issued five contract modifications within the scope of work and terms of the initial contracts, which included contract ceiling price, clear Statement of Work, and price reasonableness. Four contract modifications exceeded the contract ceiling, including one that did not have a clear Statement of Work and did not contain evidence of a price reasonableness determination to support the Statement of Work. For a fifth contract, a program office directed a contractor to perform additional work without the COs knowledge and consent.

⁹ At the time the component agency awarded the contract noted above, the simplified acquisition threshold was \$100,000.

Table 2: 5 Contract Modification Exceptions

Contract Number and Modification #	Obligated \$ Amount	Exception
DOLJ079426341, Modification #5	\$2,366,318	Ceiling exceeded Procurement Review Board (PRB) and CAO approval amount.
DOLJ079526604, Modification #12	\$643,316	Unclear Statement of Work and no price reasonableness determination to support the additional work in the Statement of Work.
DOLJ081A20618, Modification #11	\$1,776,398	Exceeded pre-established contract year estimated costs.
DOLJ10FF22136, Modification #1	\$7,560	Exceeded contract year ceiling without Assistant Regional Administrator pre-approval.
DOLJ099529232, Modification #1	\$594,010	Program Office directed the contractor to perform additional work without the COs knowledge and consent.

Contract Ceiling, Price Reasonableness, and Statement of Work

Four contract modifications were issued outside the scope and terms of initial contracts, as follows:

- DOLJ079426341 Modification #5 exceeded the initial contract ceiling amounts approved by the PRB and CAO. Component agency officials could not provide documentation to support that the PRB had subsequently approved the increase.
- DOLJ079526604 Modification #12 did not have a clear Statement of Work and did not contain evidence of a price reasonableness determination. The Statement of Work did not contain a clear description of work and the purpose of some of the line items in the Price/Cost Schedule was not clear. Furthermore, the file did not contain evidence that the CO made a determination that the price of additional services was fair and reasonable. While the component agency used the same labor rate as the initial contract for the coordinator/facilitator in Modification #12, the modification contains additional line items that require a price reasonableness determination.

In its response to the draft report, the Department stated that some Statements of Work can be very complex and highly technical, and that a sufficient price determination memorandum was included in the file. While we agree that Statements of Work can be complex, additional line items were added and the Department did not provide a price reasonableness determination to support these items.

- DOLJ081A20618 Modification #11 exceeded the maximum percentage allowed to the pre-established contract year estimated costs for Option Year 2 specified in the initial contract. This modification increased the ceiling of Option Year 2 by nearly 20 percent; however the original contract explicitly prohibited increases to pre-established contract year estimated costs by more than 10 percent, as follows: “*Deviations which would increase the total pre-established option year*

estimated costs by more than 10 percent shall not be permitted under any circumstances.” According to component agency officials, they exceeded the estimated contract year price resulted from the funding increase associated with ARRA, which could not have been anticipated in 2008 when the contract was awarded. In addition, they stated that the increased cost was associated with providing technical assistance to additional grantees that they funded using the additional ARRA funds assigned and the work was identical in nature to the existing contract.

According to component agency officials, during interaction with the PRB on an earlier modification, they agreed to re-compete the requirement, which they believed negated the need to return it to the PRB for the ceiling increase resulting from Modification #11. OIG disagrees that the agreement to re-compete the requirement canceled the requirement for the component agency to return it to the PRB for this modification.

In its response to the draft report, the Department stated that since the increase was not prohibited by statute or regulation, this increase was within the authority of the CAO and reviewed by the PRB. While we agree the increase was not prohibited by statute or regulation, the Department did not obtain PRB approval for this modification. Instead, the Department provided PRB documentation for an earlier contract modification.

- DOLJ10FF22136 Modification #1 exceeded the contract year ceiling without pre-approval from the Assistant Regional Administrator.

FAR, Part 6, Subpart 6.001(c), exempts modifications from full and open competition if the modifications are within the scope and under the terms of an existing contract.

Equitable Adjustment Issued Instead of Using Ratification for Unauthorized Commitment

A component agency issued one modification as an equitable adjustment to a contractor instead of requesting the Program Office to submit a ratification request for work completed by the contractor that exceeded the CO's authorization.

DOLJ099529232 Modification #1 provided an equitable adjustment to the contractor for additional work performed based on instructions from the Program Office without the CO's knowledge and consent. The CO originally issued a verbal authorization followed by written confirmation to the contractor to continue work as specified in the initial contract. However, the CO issued a stop work order after determining the contractor was performing unauthorized work. The CO subsequently issued Modification #1 to the contractor as an equitable adjustment.

According to component agency officials, the contractor submitted a claim for increased costs for travel and labor above the original amount specified in the contract. The claim

stated these costs were attributable to directions given by the Program Office for travel to additional locations for additional information gathering interviews over and above those originally identified in the contract's Statement of Work. The CO did not authorize this additional work: however, component agency officials stated the work met the requirements for approval of a ratification, the payment and additional work was of the same nature contained in the contract's statement of work, funding was available, the Program Office directed and accepted the contractor's performance, and the contractor's performance benefited DOL.

FAR, Part 6, Subpart 6.001(c), exempts modifications from full and open competition if the modifications are within the scope and under the terms of an existing contract.

FAR, Part 1, Subpart 1.602-3 (a), states that ratification is the act of approving an unauthorized commitment, which is defined as an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government.

In its response to the draft report, the Department stated that the CO had the authority to process this action as an equitable adjustment because the CO verbally authorized the contractor to perform the work. We disagree because the Program Office, not the CO, instructed the contractor to provide services and meet deadlines that were not included in the contract, which resulted in an unauthorized commitment requiring ratification.

Finding 2 — DOL could not demonstrate through documentation that it checked EPLS, documented conflict of interest certifications, and performed higher levels of review.

Based on our review of contract and contract modification files, component agencies could not provide documentation that they checked EPLS (24 instances), obtained conflict of interest certifications (23 instances), and documented a higher level of review (45 instances) (see Exhibit 1). In addition, we identified one sole source contract totaling approximately \$3.5 million where the component agency could not provide price reasonableness documentation or provide support for the contractor's 8 percent profit.¹⁰

EPLS

We identified 24 contracts and contract modifications totaling approximately \$13.1 million for which the component agencies could not provide documentation that they checked EPLS prior to award. Without assurance that component agencies performed and documented an EPLS search, there is a risk that DOL could make awards to ineligible contractors. We independently verified that DOL did not award these contracts and contract modifications to suspended or debarred contractors.

¹⁰ We did not include this contract in our projections as a result of incorrect classification in FPDS-NG.

FAR, Part 9, Subpart 9.405(d), requires COs to review EPLS after the receipt of proposals and again immediately prior to award.¹¹ To ensure this occurs, a Senior Procurement Executive Memorandum, dated December 30, 2008, requires COs to review EPLS prior to award and ensure a copy is included in contract files.

In its response to the draft report, the Department stated that a CO's signature on the award and the required responsibility determination documents demonstrates that EPLS was checked. We disagree that a CO's signature on the award and the required responsibility determination documents demonstrates that EPLS was checked. Although the FAR does not contain an EPLS documentation requirement, the Senior Procurement Executive Memorandum does require such documentation.

Conflict of Interest

We identified 23 sole source awards totaling approximately \$22.8 million for which the component agencies could not provide documentation that they obtained required conflict of interest certifications. Of these 23 contracts, 19 were SBA Section 8(a) awards totaling approximately \$15.4 million. According to the officials of one component agency, conflict of interest certifications were not required for SBA Section 8(a) contracts and they are not responsible for verifying the conflict of interest certifications of program officials. Another component agency's officials told us that they only became aware of the requirement for conflict of interest certifications by the program official for SBA Section 8(a) sole source contracts in 2010. Specifically, they told us the previous OAMS Director sent an email during 2010 that informed COs of this requirement; consequently, their COs did not obtain the certification for some of their previously awarded SBA Section 8(a) sole source contracting actions but they are now doing so.

The FAR does not exempt component agencies from verifying conflict of interest certifications for SBA Section 8(a) contracts. OIG believes that verifying the conflict of interest certifications of program officials and documenting this prior to awarding a contract are necessary actions the COs must take. The CO should also ensure responsible officials include a conflict of interest certification in their recommendation of potential SBA Section 8(a) contractors and include it in the contract file. Without this certification, there is risk of an undisclosed business or personal relationship could exist between officials involved in the procurement and the contractor which could result in the government not receiving the best value.

FAR, Part 3, Subpart 3.101-1, requires that Government procurements should avoid any actual or appearance of conflict of interest in Government-contractor relationships. In addition, FAR, Part 1, Subpart 1.602-2, requires COs to ensure performance of "all necessary actions for effective contracting."

¹¹ This requirement does not apply to contract modifications that incrementally fund a contract under the terms and conditions of the initial contract.

DLMS 2, Section 835.A, requires the program official responsible for an “other than full and open competition” to “explain any past or existing business or personal relationships” with a proposed contractor or “certify that none exist”. To ensure that this occurs, a Senior Procurement Executive Memorandum, dated December 30, 2008, requires COs to document conflict of interest certifications made by program officials for sole source contracts.

In its response to the draft report, the Department stated that conflict of interest certifications are not required for SBA Section 8(a) contracts, and DLMS 2, Section 835.A, does not apply. We disagree that conflict of interest certifications are not required. While we agree the FAR does not explicitly require certifications, documentation is critical to the Department’s efforts to ensure controls have been followed. Furthermore, these certifications are required by the Department’s DLMS.

Documentation of Higher Level Review

We identified 45 awards totaling approximately \$45 million for which the component agencies could not demonstrate they documented a higher level of review of their contract and contract modifications prior to award or issuance. According to component agency officials, COs do not perform all activities prior to contract award and contract modification issuance. Rather, Contract Specialists perform a number of activities during the procurement process. For example, one component agency’s officials believed the CO’s signature on the contract or contract modification was all that was required to document the CO’s review of the procurement, including activities the Contract Specialists performed. Another component agency’s officials told us their COs discarded review sheets from contract files once Contract Specialists corrected deficiencies. OIG believes that documenting a higher level of review outside of the CO’s signature on contracts and contract modifications is a necessary action to verify procurements comply with the FAR.

A Senior Procurement Executive Memorandum dated December 30, 2008, requires COs, as an important and necessary business practice, to adequately document that all necessary procurement steps were satisfied. A checklist must be completed for each contract prior to award and maintained in the contract file signed by the CO.¹²

In its response to the draft report, the Department stated that higher level review is not a procurement violation. While we agree the FAR does not require documentation of higher level review, documentation is critical to the Department’s efforts to ensure controls have been followed and the Department’s Senior Procurement Executive Memorandum requires such documentation.

¹² One component agency did not use checklists. Rather, they used file indexes that the CO didn’t sign in the majority of cases. They believe there was no signatory requirement for contract checklists and contract modifications did not require a checklist. As a result, we did not include instances on non-compliance with the Senior Procurement Executive Memorandum checklist and checklist signatory requirements in the number of awards or obligated value cited, as this would skew the audit results.

Contractor Profit

We identified one sole source contract totaling approximately \$3.5 million — contract #DOLJ101A21386 — where the component agency could not provide price reasonableness documentation or support for the contractor's 8 percent profit, which could amount to \$280,000.

FAR, Part 15, Subparts 15.406-3(a) (10), and 15.406-3(a) (11), require the CO to document profit negotiations and price reasonableness determination.

Finding 3 — DOL had not updated its policies or developed detailed and standardized procurement procedures.

DOL had not recently updated its procurement regulations and guidance, and had not developed detailed and standardized procedures for three of the areas we reviewed. As a result, the consistency and quality of DOL's procurement function was heavily dependent on its component agencies. Furthermore, Procurement Management Reviews conducted by the Senior Procurement Executive, through OAMS, lacked department-wide coverage.

We found that DOL had not updated DOLAR and DLMS 2, Chapters 830, 838, and 839 since 2008 and had not developed detailed and standardized procurement procedures for EPLS, higher level review, and conflict of interest. Though the Standards require management to develop detailed policies, procedures, and practices, DOLAR and the DLMS 2 chapters cited above did not adequately fulfill this requirement. For example, we identified the following:

- A DOLAR provision and a CO Notice were out of date with regard to threshold amounts.¹³
- The existing DOLAR language regarding EPLS only directed the heads of component agencies to "provide an effective system to ensure that contracting staffs consult [EPLS]." In addition, DOLAR did not address procedures to ensure component agencies document verification of conflict of interest certifications or a higher level of review of contracts and contract modifications.
- Aside from awards reviewed by the PRB, DLMS 2, Chapter 830, did not address procedures to ensure component agencies provide documentation that they checked EPLS or documented a higher level of review of contracts and contract modifications. In addition, DLMS 2, Chapter 830, did not provide detailed

¹³ The simplified acquisition threshold increased from \$100,000 to \$150,000 in October 1, 2010. DOL had not updated DOLAR document DL 1-2216, Simplified Acquisition Documentation Checklist, to reflect this increase. In addition, DOL listed CO Notice 2009-20, Format for Office of the Secretary Reporting, on Labornet as active, but the Procurement Executive actually rescinded it in 2009 via email to COs Department-wide.

procedures to ensure component agencies demonstrated verification of conflict of interest through documentation.

- DOL last updated DOLAR in 2004; DLMS 2 Chapter 830, Procurement Management Program in 2004; and DLMS 2, Chapters 838 and 839, which address contracts greater than 5 years and multi-year contracts, in 2008.

In the absence of updated department-wide procurement regulations and guidance as well as detailed and standardized procurement procedures, we found that component agencies developed their own Standard Operating Procedures, memorandums, or supervisory review policies, among other controls, for their procurement activities. Despite these efforts, we found component agencies could not provide documentation that they checked EPLS (24 instances), obtained conflict of interest certifications (23 instances), and documented a higher level of review (45 instances) in the contracts they awarded and contract modifications they issued (see Finding 2). In addition, component agencies were either not aware of or did not adhere to a memorandum issued by the Senior Procurement Executive in response to an OIG report that covered these and other areas.

Recent OIG audits found that MSHA and Job Corps could not demonstrate their procurement processes complied with the FAR. We found MSHA did not adequately support sole source awards and include justifications or adequate justifications to make awards, among other deficiencies. A 2008 report on the transfer of the Job Corps program from ETA to the Office of the Secretary found that the ETA and OASAM did not always follow the FAR in processing contract awards and contract modifications. We found ETA and OASAM did not adequately support sole source awards and include justifications or adequate justifications to make awards, obtain PRB and CAO approval for contract modifications, and provide necessary contract documentation, among other deficiencies.¹⁴ Although DOL has made progress in addressing these deficiencies at MSHA and Job Corps, we found that these deficiencies extended beyond MSHA and Job Corps. Specifically, similar issues existed with the procurement processes at BLS, ETA, and OASAM.

In its response to the draft report, the Department stated that the report did not demonstrate how the Department is not in compliance with the *Standards*. We disagree since the *Standards* state that management must continually assess and evaluate its internal controls to assure that the control activities used are effective and updated when necessary. As noted in this and prior OIG reports, DOL internal control procedures for EPLS, conflict of interest, and higher level review are neither current nor effective.

We determined that the Senior Procurement Executive's monitoring of DOL procurement activities through its Procurement Management Reviews lacked

¹⁴ As a result of the transfer, responsibility for providing contract support moved from ETA to OASAM. OIG identified seven deficiencies in ETA contracts and two deficiencies in OASAM contracts samples for the 2008 report.

department-wide coverage.¹⁵ Specifically, the Senior Procurement Executive, through OAMS, had never conducted a Procurement Management Review of OPS — which has the largest volume of contracting activity in DOL — and had not conducted a Procurement Management Review of the OASAM Regional Offices since 2003. OAMS had conducted a total of 19 Procurement Management Reviews, as follows: six at BLS since January 2001, the last in May 2010; one at ETA in September 2008; six at various Job Corps Regions since September 1997, the last at the Dallas Regional Office in April 2003; five at MSHA since 1992, the last in August 2009; and one at the Veterans' Employment & Training Service, conducted in April 2011.¹⁶ We did not evaluate the substance or results of these Procurement Management Reviews.

In its response to the draft report, the Department stated that the 19 procurement management reviews was evidence of procurement oversight. We disagree, since 14 of the 19 Procurement Management Reviews were conducted during or prior to FY 2006, which demonstrates that ongoing monitoring of the Department's procurement has not occurred.

The *Standards* state that management is responsible for developing the detailed policies, procedures, and practices to fit their agency's operations and to ensure that they build these controls into an integral part of operations. In addition, the *Standards* state that as programs change and as agencies strive to improve operational processes, management must continually assess and evaluate its internal control to assure that the control activities used are effective and updated when necessary. Furthermore, the *Standards* state that management should generally design internal controls to assure that their agency conducts ongoing monitoring in the course of normal operations. Management should perform ongoing monitoring and ensure they ingrain monitoring in the agency's operations.

FAR, Part 2, Subpart 2.101(a), defines CAOs as the executive official responsible for agency performance of procurement activities and procurement programs, which includes monitoring for performance in accordance with appropriate laws and regulations.¹⁷ FAR, Part 2, Subpart 2.101(a), defines a Senior Procurement Executive as the official responsible for management direction of procurement activities, which includes implementation of procurement standards.¹⁸

The results and findings of this and prior OIG reports demonstrate weaknesses in DOL's procurement process and highlight that the Department should strengthen its oversight and monitoring of DOL procurements. The lack of updated department-wide procurement regulations and guidance as well as detailed and standardized

¹⁵ The OAMS Director stated that the Secretary of Labor's Operating Plan outlines the Procurement Management Reviews OAMS is to perform and that they rotate these reviews among the component agencies.

¹⁶ The OAMS Director stated that OAMS had scheduled a Procurement Management Review of ETA for September 2011. OAMS conducted Procurement Management Reviews at the following Job Corps Regions: two reviews at Atlanta; two at San Francisco; one at Seattle and one at Dallas.

¹⁷ FAR, Part 2, Subpart 2.101(a), through incorporation of 41 U.S.C. §414(c), also requires that Senior Procurement Executives, if designated, report directly to the CAO without intervening authority.

¹⁸ Ibid.

procurement procedures led to contracts and contract modifications in FY 2010 that component agencies could not provide documentation that they complied with the FAR or a Senior Procurement Executive memorandum. In addition, component agencies could not demonstrate through documentation that they performed required procurement activities.

RECOMMENDATION

We recommend that the Assistant Secretary for Administration and Management update DOL's procurement regulations and guidance and develop detailed and standardized procurement procedures using the *Standards for Internal Control in the Federal Government* and input from component agency officials.

We appreciate the cooperation and courtesies that BLS, ETA, OASAM Dallas Region, and OPS personnel extended to OIG during this audit. We have listed OIG personnel who made major contributions to this report in Appendix E.



Elliot P. Lewis
Assistant Inspector General
for Audit

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Exhibits

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Exhibit 1**EPLS, conflict of interest certifications, and higher level of review exceptions.****24 Contracts and Contract Modifications Without EPLS Verification**

Contract Number	Modification Number	Obligated Amount
DOLJ089326954	0025	\$3,979,498
DOLJ101A21386	N/A	\$3,450,796
DOLJ091A20986	0001	\$1,543,484
DOLJ109A31122	N/A	\$1,476,298
DOLJ109431340	N/A	\$771,222
DOLJ079526604	0012	\$643,316
DOLJ079N26473	0008	\$466,377
DOLJ109429879	N/A	\$400,000
DOLJ099629594	0002	\$208,800
DOLJ102J14059	N/A	\$26,393 ^a
DOLJ10HF20366	N/A	\$10,400
DOLJ10HF20363	N/A	\$10,400
DOLJ10FF22115	N/A	\$10,000
DOLJ10FF22114	N/A	\$10,000
DOLJ10FF22136	N/A	\$9,990
DOLJ102J14093	N/A	\$9,315
DOLJ10FF22125	N/A	\$8,215
DOLJ10HF20371	N/A	\$7,967
DOLJ10FE22135	N/A	\$7,619
DOLJ10FF22136	0001	\$7,560
DOLJ102J14093	0001	\$5,265
DOLJ10FJ22130	N/A	\$5,021
DOLJ10FF22122	N/A	\$3,679
DOLJ109630975	N/A	\$0 ^b
TOTAL		\$13,071,615

^a Contract performance period started prior to the contract award. According to the contracting agency official, the delay in awarding the contract was partly due to interface problems between the E-Procurement System and the New Core Financial Management System. OIG noted EPLS was not checked prior to receiving uninterrupted maintenance service.

^b Component agencies often issue Indefinite Delivery Contracts (IDC) at \$0 and administer them delivery and task orders. The ceiling for this contract is approximately \$1.1 million.

4 Sole Source Contracts Without Conflict of Interest Certifications

Contract Number	Obligated Amount
DOLJ109F30430	\$7,100,000
DOLJ109E30985	\$204,700
DOLJ109631286	\$39,803
DOLJ102J14059	\$26,393
TOTAL	\$7,370,896,

19 8(a) Contracts Without Conflict of Interest Certifications

Contract Number	Obligated Amount
DOLJ101A21615	\$4,291,192
DOLJ101A21386	\$3,450,796
DOLJ101A21605	\$2,000,000
DOLJ109A30134	\$1,396,927
DOLJ109A30795	\$1,157,646
DOLJ109A30312	\$1,102,342
DOLJ109431340	\$771,222
DOLJ109E31175	\$430,210
DOLJ101A21422	\$350,000
DOLJ109630857	\$154,980
DOLJ101A21518	\$118,751
DOLJ109A30876	\$79,205
DOLJ109430010	\$76,134
DOLJ109630254	\$37,158
DOLJ109631228	\$32,020
DOLJ101A21443	\$0 ^a
DOLJ109630975	\$0 ^b
DOLJ109F30068	\$0 ^c
DOLJ109F31348	\$0 ^d
TOTAL	\$15,448,582

^a The ceiling for this IDC contract is \$900,000.

^b The ceiling for this IDC contract is approximately \$1.1 million.

^c The ceiling for this IDC contract is approximately \$3 million.

^d The ceiling for this IDC contract is approximately \$11 million.

45 Contracts and Contract Modifications Without Documentation of Higher Level Review

Contract Number	Modification Number	Obligated Amount
DOLJ069E24614	0026	\$7,413,112
DOLJ081A20715	0011	\$5,572,764
DOLJ109E30501	N/A	\$5,096,094
DOLJ101A21386	N/A	\$3,450,796
DOLJ069E24614	0023	\$3,171,906
DOLJ109E30229	0002	\$2,526,218
DOLJ089427467	0013	\$2,256,004
DOLJ069E24614	0022	\$2,114,604
DOLJ069E24212	0019	\$2,100,000
DOLJ081A20618	0011	\$1,776,398
DOLJ071A20538	0011	\$1,609,682
DOLJ091A20931	0002	\$900,000
DOLJ109K29977	N/A	\$689,726
DOLJ079526604	0012	\$643,316
DOLJ109A30668	N/A	\$614,412
DOLJ109E30114	0005	\$595,334
DOLJ099529232	0001	\$594,010
DOLJ079N26473	0008	\$466,377
DOLJ079E25293	0007	\$439,568
DOLJ109429879	N/A	\$400,000
DOLJ099J28491	0016	\$360,435
DOLJ099628970	0003	\$302,824
DOLJ079E25293	0006	\$284,506
DOLJ071A20538	0012	\$283,759
DOLJ089A28096	0008	\$227,652
DOLJ099628970	0004	\$217,000
DOLJ099629594	0002	\$208,800
DOLJ079626087	0014	\$205,855
DOLJ089A27902	0025	\$190,180
DOLJ099J28491	0012	\$169,373
DOLJ099A29257	0003	\$149,338
DOLJ109A30876	N/A	\$79,205
DOLJ099629244	0001	\$43,970
DOLJ109631286	N/A	\$39,803
DOLJ10FF22115	N/A	\$10,000
DOLJ10FF22136	N/A	\$9,990
DOLJ10FF22125	N/A	\$8,215
DOLJ10HF20371	N/A	\$7,967
DOLJ10FE22135	N/A	\$7,619
DOLJ10FF22136	0001	\$7,560
DOLJ099629407	0013	\$4,976
DOLJ109A30875	0001	\$4,672
DOLJ109A30876	0001	\$1,836
DOLJ069E24614	0027	\$1,636
DOLJ099629407	0007	\$778
TOTAL		\$45,258,271

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Exhibit 2**Statistical Projections - FY 2010 Contracts and Contract Modifications****Financial**

	Universe Size	Sample Size	Exceptions (\$)	Point Estimate	Sampling Precision	Lower Limit	Upper Limit
				95 % Confidence level			
					(+/-)		
Competed and Sole Source Combined	141	67	\$258,334	\$1,091,830	\$220,957	\$870,874	\$1,312,786
Modifications	301	68	\$5,387,602	\$16,384,279	\$5,389,566	\$10,994,713	\$21,773,845

Number of Contracts and Contract Modifications

	Universe Size	Sample Size	Exceptions (#)	Point Estimate	Lower Limit	Upper Limit
				95 % Confidence level		
Competed and Sole Source Combined	141	67	4	11	3	19
Modifications	301	68	5	18	4	31

Estimation Methodology

According to our analysis of information extracted from EPS, DOL awarded 4,291 contracts and purchase orders totaling approximately \$508 million and issued 5,615 contract and purchase order modifications totaling approximately \$1.7 billion in FY 2010. We reviewed recent audit reports issued by OIG and the FY 2011 audit workplan. We determined that the ongoing and planned audits of Job Corps and MSHA provided adequate coverage of the contracting functions of these agencies such that we excluded them from our universe. In addition, we excluded OIG contracting from our audit due to independence standards.

We determined that the most value-added approach based on the percentages of obligated dollar value and number of actions was to limit the scope of the audit to the following contracting actions awarded by BLS, ETA, and OASAM:

- initial contract actions stratified by those actions that were competed and those that were awarded on a sole source basis; and
- contract modifications.

For several of the contracts within our universe, the relevant EPS field “Extent Competed” was blank. In an effort to identify competition for these actions and classify them, we referred to FPDS-NG as of February 1, 2011. Using the relevant FPDS-NG field “Extent Competed,” we were able to associate a level of competition for all but nine (9) of these contracts. As a result, we excluded these nine (9) contracts from the universe.

We defined three universes as follows:

- 57 competed contracts with an obligated value totaling approximately \$19 million;
- 84 sole source contracts with an obligated value totaling approximately \$39 million; and
- 301 contract modifications totaling approximately \$183 million.

We used a stratified random sampling methodology for variables and attributes. The error rate was unknown and we used an expected error rate of 16 percent (based on assumed medium risk weighting) with a materiality for variables of four percent. We selected samples using a 95 percent confidence level and a desired precision of +/- seven percent.

The files we tested in each of the universes were as follows:

- Sample 1—36 competed contracts with an obligated value totaling approximately \$14.7 million;
- Sample 2—31 sole source contracts with an obligated value totaling approximately \$22 million; and
- Sample 3—68 contract modifications with an obligated value totaling approximately actions awarded totaling approximately \$104 million.

Appendices

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Appendix A**Background**

DOL decentralized procurement authority among OASAM, ETA, BLS, MSHA and OIG. Secretary's Order 2-2009 states that the Assistant Secretary for Administration and Management is DOL's CAO, and with the exception of the OIG, is responsible providing oversight for all DOL procurement activities, including delegating contracting officers the authority to procure goods and services. OASAM's OPS procures goods and services for all DOL agencies except BLS; Job Corps' center operations, outreach and placement, and architectural and engineering services; MSHA; and OIG. OASAM conducts the highest number of DOL procurements, which includes procurements for Information Technology and other goods and services. OPS awards contracts and issues contract modifications for most DOL agencies. OPS is responsible for servicing OASAM Regional Offices for open market purchases that exceed small purchase limitations.

There are various forms of contracts, which fall into the categories of either fixed-price contracts or cost reimbursement contracts according to the FAR. DOL awards procurement contracts based on full and open competition to determine the contract actions best suited to fulfill requirements sought by DOL component agencies.

DOL is responsible for complying with the Standards, which provide the overall framework for establishing and maintaining internal control and for identifying areas at greatest risk of fraud, waste, abuse, and mismanagement. DOL's procurement program has been an OIG top management challenge and remains a concern for OIG. Recent OIG reports found that MSHA and Job Corps could not demonstrate that their procurement processes complied with the FAR. In FY 2010, DOL awarded 4,291 contracts and purchase orders totaling approximately \$508 million and issued 5,615 contract and purchase order modifications totaling approximately \$1.7 billion.

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

Objective

The audit objective was to answer the following question:

To what extent did DOL ensure that contracts were awarded based on the best value to the government and contract modifications were issued within the terms of initial contracts?

Scope

In FY 2010, DOL awarded 4,291 contracts and purchase orders totaling approximately \$508 million and issued 5,615 contract and purchase order modifications totaling approximately \$1.7 billion. We excluded the following actions awarded by DOL in FY 2010:

- Basic Ordering Agreement actions;
- Blanket Purchase Agreement actions;
- Federal Supply Schedule actions;
- Government-Wide Area actions;
- Purchase Order actions;
- Micro-purchases (procurements \$3,000 or less: excluded from contracts only. We added Indefinite Delivery Contracts, which were either \$0 or less than \$3,000, back to the population);
- De-obligating actions (action with negative balances);
- Contracting actions awarded by OIG and MSHA;
- Contracting actions awarded for the Job Corps program;
- Delivery and task orders; and
- \$0 obligation amounts.

Of the FY 2010 contracts awarded and contract modifications issued by BLS, ETA, and OASAM, these agencies awarded 141 contracts totaling approximately \$58.8 million and issued 301 contract modifications totaling approximately \$183 million. Of these contracts and contract modifications, DOL funded \$12.6 million in contracts and \$3.3 million in contract modifications under ARRA.

We conducted our audit work at BLS, ETA, OPS, and OASAM Regional Offices, which each have delegated procurement authority. In addition, we also contacted officials at MSHA to discuss awards it made to a contractor subsequent to SBA placing the contractor on EPLS that lists, among other things, parties excluded from receiving Federal contracts. We reviewed eight contract modifications MSHA issued to this suspended contractor.

Methodology

Internal controls provide reasonable assurance regarding the prevention of or prompt detection of unauthorized acquisition, use, or disposition of an agency's assets. To accomplish our audit objectives, we obtained an understanding of applicable laws, regulations and DOL policies and procedures. We interviewed procurement officials at OPS, OASAM Dallas Regional Office, BLS and ETA to gain an understanding of their procurement processes. We also interviewed the OAMS Director to gain an understanding of the department-wide internal controls structure for procurement — that is, standard procurement methods and procedures. The audit team used Data Collection Instruments to capture the FAR elements for the purposes of this audit. We used the definition of “best value” in FAR, Part 2, Subpart 2.101, which defines best value as “the expected outcome of a [procurement] that, in the Government's estimation, provides the greatest overall benefit in response to the requirement.”

To assess the reliability of the data OASAM's contractor provided in its EPS extract of FY 2010 contracting actions we (1) performed limited electronic testing of key data elements — action type name, contracting office code, and program office code-to detect missing values and periods of time, invalid identifiers, and obvious errors; (2) compared total FY 2010 obligations and number of contracting actions in the EPS extract against DOL's general ledger system (New Core Financial Management System) and the FPDS—NG; (3) performed, to the extent possible, a limited reconciliation of FY 2010 BLS, ETA, and OASAM awards against the FPDS—NG; (4) followed up on trends, unusual changes, and outliers found; (5) reviewed existing information and documentation about EPS and the process the contractor used for extracting the FY 2010 contracting actions data from EPS; (6) interviewed officials from OASAM about EPS controls and guidance to contracting officers for entering contracting actions into EPS; and (7) performed some checks on the FY 2010 contracting actions data extracted from EPS against records from a selection of procurement files.

When we found discrepancies (such as non-populated fields or missing records), we brought them to the attention of the OAMS Director and worked with her to identify the source of the discrepancies before conducting our analyses. For several of the actions, the relevant EPS field “Extent Competed” was blank. In an effort to identify competition for these actions, we referred to FPDS-NG as of February 1, 2011. Using the relevant FPDS-NG field “Extent Competed,” we were able to associate a level of competition for all but a few of these actions, and excluded these few actions from the universe of data within our scope. We determined that the data were sufficiently reliable for the purposes of our report.

We reviewed a statistical sample of FY 2010 contracts and contract modifications that were awarded and issued by BLS, ETA (excluding Job Corps), and OASAM.¹⁹ We tested our sample using a Data Collection Instrument we developed based on the FAR, DLMS 2, DOLAR, CO Notices, and internal policies issued by BLS, ETA, and OPS.

¹⁹ See Exhibit 2 for details on statistical sampling.

We conducted this audit in accordance with generally accepted government auditing standards for performance audits. 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.

Criteria

- BLS Policies
- DLMS 2, Chapter 810 (October 21, 1991)
- DLMS 2, Chapter 830, (August 9, 2004)
- ETA Division of Contract Services Memorandums
- ETA Standard Operating Procedures
- FAR, March 2005
- Competition in Contraction Act of 1984, 41 United States Code (U.S.C.) 253
- Department of Labor Acquisition Regulation System, Title 48, CFR 29
- GAO, *Standards for Internal Control in the Federal Government* (GAO/AIMD-00-21.3.1), November 1999
- GAO, *Assessing the Reliability of Computer-Processed Data* (GAO-09-680G), July 1999
- OASAM Contracting Officer Notices
- OPS Bulletin A10—Independent Government Cost Estimates
- OPS Bulletin A12—To Provide Instructions and Template Format for Procurements Involving Other Than Full and Open Competition
- OPS Bulletin A14—Purchase of Name Brand Products
- OPS Bulletin A17—Advisory and Assistance Services Approvals
- OPS Bulletin A19—Approval Checklist Required for Procurement Actions

- OPS Bulletin B1—Guidance on Requests for Contract Modifications
- OPS Bulletin B4—Guidance on exercising option years on existing contracts
- OPS Policy Memo #08-02: Supervisory Review of OPS Contract Actions
- OPS Policy Memo #08-03: CCR and EPLS Verification
- OPS Policy Memo #08-04: Maintenance of Contract Files
- OPS Policy Memo #08-05: Annual Self-Inspection Program
- Partnership Agreement Between the U.S. Small Business Administration And the U.S. Department of Labor—8(a) Business Development Program, September 2009
- Senior Procurement Executive Memorandum: Procurement Guidance to Strengthen Internal Controls for DOL's Acquisition Process, September 30, 2008

Appendix C**Acronyms**

ARRA	American Recovery and Reinvestment Act of 2009
BLS	Bureau of Labor Statistics
CAO	Chief Acquisition Officer
CO	Contracting Officer
DLMS	Department of Labor Manual Series
DOL	U.S. Department of Labor
DOLAR	Department of Labor Acquisition Regulations
EPLS	Excluded Parties List System
ETA	Employment and Training Administration
FAR	Federal Acquisition Regulation
FPDS-NG	Federal Procurement Data System—Next Generation
FY	Fiscal Year
GAGAS	Generally Accepted Government Auditing Standards
GAO	Government Accountability Office
IDC	Indefinite Delivery Contract
IGCE	Independent Government Cost Estimate
Job Corps	Office of Job Corps
MSHA	Mine Safety and Health Administration
OAMS	Office of Acquisition Management Services
OASAM	Office of the Assistant Secretary for Administration and Management
OIG	Office of Inspector General
OPS	Office of Procurement Services
PRB	Procurement Review Board
SBA	Small Business Administration
Standards	Standards for Internal Control in the Federal Government

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Appendix D

OASAM Response to Draft Report

U.S. Department of Labor

Office of the Assistant Secretary
for Administration and Management
Washington, D.C. 20210

MAR 20 2012

MEMORANDUM FOR ELLIOT P. LEWIS
Assistant Inspector General for AuditFROM: EDWARD HUGLER
Deputy Assistant Secretary for OperationsSUBJECT: Management's Response to the Office of Inspector General Draft
Report entitled: Department Oversight Needs to Be Strengthened
Reduce Procurement Risk, Report No. 17-11-003-07-711

This responds to the above-described draft report, dated February 13, 2012. The revised stated objective of the audit was to determine to what extent did DOL ensure that contracts were awarded based on the best value to the government and contract modifications were issued within the terms of the initial contracts.

At the outset, management acknowledges that any process can be improved and we will take appropriate action to update the Department-wide policies and procedures to address the findings outlined in the draft report. Management also acknowledges that the draft report incorporates a number of our earlier comments intended to improve accuracy, including clarifying that during the audit—

- The Office of Inspector General (OIG) found no DOL contracts that were improperly awarded;
- The Department had not awarded contracts or modifications to suspended or debarred contractors;
- That no contract funding was spent inappropriately; and
- The OIG did not assess the reasonableness of costs associated with contracts that were reviewed as part of the audit and, thus, did not find the costs of any of the contracts reviewed were unreasonable.

These clarifications are important to distinguish the audit findings in this report from incidents of procurement abuse or improperly awarded contracts—of which there is no evidence in this audit report.

As we discussed during the exit briefing, it is reasonable to anticipate that the readership of OIG audit reports often lack subject-matter expertise, including the complexities of government contracting. As such, to present a balanced report and not mislead the consumers of the audit report, all due diligence should be taken to present the information in a way that does not allow the uninitiated reader to get the impression of far greater risk or gravity than the facts actually warrant. Our responses below are intended to address this issue in two respects: In Section A of our reply we address the larger context of the Department's procurement structure so that the reader of the report has an appreciation for where in this structure the contract awards and modifications were handled. Section B addresses management's growing concern with the OIG's extrapolation of small sample results - in this case to suggest that more than \$17 million in

procurement funds could have been used more efficiently. As discussed further below, we think this is misleading, leaving the public with an impression that millions of dollars were misspent when in fact there is no direct evidence that this has occurred. We also address concerns about the logical construct of this audit and others like it. In Section C, we address management's concern that the original objective of the audit changed after the audit was completed, and in Section D we provide specific responses to the draft report's findings.

A. DOL Procurement Structure

Within DOL, acquisition authority is decentralized among the Office of the Assistant Secretary for Administration and Management (OASAM), the Employment and Training Administration (ETA), the Bureau of Labor Statistics (BLS), and the Mine Safety and Health Administration (MSHA). Secretary's Order 2-2009 provides that the Assistant Secretary for Administration and Management is the Department's Chief Acquisition Officer (CAO) and, with the exception of those involving the Office of Inspector General, is responsible for providing oversight for all DOL procurement activities, including delegating contracting officers the authority to procure goods and services. OASAM's Office of Procurement Services (OASAM-OPS) procures goods and services for all DOL agencies with the exception of MSHA; BLS; Job Corps' center operations, outreach and placement, and architectural and engineering services; and the OIG.¹

B. Statistical Extrapolation from Small Samples and Flawed Logical Construct

The audit, based on three small sample sets, reports that "...OIG estimated that DOL could have used \$17.5 million in FY2010 funds more efficiently..." In management's view this is grossly misleading to the readers of this report, when in fact there is no direct evidence that any funds were misspent.

In addition to being a misleading technique in reporting audit results, management has serious concerns about the validity of the methods employed to reach the report's conclusions. If a statistical analysis is to form the basis for audit conclusions or recommendations, much greater rigor is required. As presented, the report raises serious questions about whether the appropriate universe, sampling approach, and statistical assumptions were made in formulating the projections.

To illustrate some of these deficiencies:

- The auditors do not explain why they selected the universe of contracts for examination (for example, why were BPA and task order actions not included?);
- The auditors used an idiosyncratic approach to taking a sample of that universe, did not present summary statistics on whether the sample reflected the base characteristics of the selected universe, and inappropriately extrapolated sample data to a universe to form the basis for potentially inaccurate conclusions. Although the auditors use randomization to select cases from their defined universe - which is apparently intended to minimize potential selection bias - no explanation is given for why the OIG selected the number of cases that

¹ Appendix A (Background) of the revised draft report states that "until recently, OPS served BLS above certain dollar thresholds and all ETA information technology procurements." This statement is incorrect. OPS also continues to procure all information technology goods and services for ETA.

they did. Without the OIG explaining why they selected the number of cases from their defined universe of actions, it is impossible to determine whether the OIG used an appropriate sampling ratio, or if the sample used was statistically valid.

- The auditors use an expected error rate of 16 percent, with no explanation as to why.
- There is no indication of whether sensitivity testing was used to see how the results would change based upon different assumptions in the model.
- The auditors present the 95 percent confidence interval as a mid-point estimate and should have presented it as a range.

In sum, the audit report relies on insufficient analysis, resulting in misleading claims. In the future, OASAM would be willing to work with the OIG and the Department's Chief Evaluation Officer (CEO) to help develop statistically valid samples for audits that the OIG might be interested in undertaking. The CEO is well versed in statistical analysis and works here in the Department.

The audit report also suffers from weak construct validity—whether or not legitimate inferences can be made based on the measures selected for the audit and the concepts to be measured. In this case, the audit objective is stated as: “To what extent did DOL ensure that contracts were awarded based on the best value to the government and contract modifications were issued within the terms of initial contracts?” Instead of identifying *actual instances* of contract awards that are not the “best value” to the government and *actual instances* in which contract modifications were issued that were not “within the terms of initial contracts”, the auditors chose to use the absence of documentation of internal controls as proxy measures.

As justification for using the absence of documentation as proxy measures, the OIG argues on page 28 of the draft audit report that “...internal controls provide reasonable assurance regarding the prevention of or prompt detection of unauthorized procurements. . . .” This is true. However, none of the findings involving the absence of documentation conclude, for example, that a contract was improperly awarded, or that a suspended/debarred contractor received an award, or that the auditors found contract pricing to be unreasonable.²

This is not to suggest that internal controls are unimportant, nor is it to suggest that internal controls should not be the focus of audits. However, audits of internal controls should be the stated objective of the audit, which they were not in this case. Nevertheless, management will take corrective action to ensure that documentation that should be in contract files is present.

C. The Objective of the Audit Was Revised After the Audit Was Completed

The initial draft report issued on September 23, 2011, included an objective to determine “...to what extent did the Department ensure procurement practices were consistent across DOL....” Management was also informed of this objective during the audit entrance conference. However, this objective was dropped from the current draft report, apparently because management was able to demonstrate that DOL has standard procurement methods and procedures in place. Inasmuch as generally accepted government auditing standards used for this audit indicate that audit objectives should be established prior to beginning the audit field work,

² In fact, footnote 9 states the “OIG did not assess whether or not the costs associated with these contracts were unreasonable.”

we think the original objective should be retained and the report acknowledge that the Department has procurement methods and procedures in place to ensure component agencies awarded contracts and issued contract modifications properly Department-wide.

D. Management’s Response to the Revised Draft Report’s Audit Findings

Finding 1—DOL could not demonstrate that it funded FY 2010 procurements based on best value or within the scope and terms of initial contracts.

The premise of this finding is misleading and based on the auditors’ disagreement with the price determination documentation contained in the contract files. This finding is not based on direct evidence that supports the finding as presented. For example, the finding implies that DOL contract awards were not the best value to the government, even though the revised draft report implicitly acknowledges that: a) no DOL contracts that were improperly awarded; and, b) specifically acknowledges at footnote 9 on page 5 that the OIG did not assess whether or not the costs associated with the contracts were unreasonable.

In addition, the report’s analysis in support of the finding is misleading or in error as further discussed below:

Best Value Award Justifications.

Page 5 of the revised draft report states that 67 contracts were reviewed and a total of 4 out of the 67—approximately 5 percent of the sample size—did not demonstrate that the contracts were awarded based on best value. The chart on page 5 of the revised draft report states that BLS Contract # DOLJ102J104059 did not justify award to the contractor selected (see Table 1 on page 5). With regard to the BLS contract, the issue at hand is unrelated to the concept of “best value.” As a matter of substance, the award was proper. The deficiency is one of inadequate documentation. The justification mistakenly pertained to the product manufacturer rather than the product reseller. Although both the product manufacturer and the product reseller are legitimate sole sources, this was not properly documented to the standard set by the Federal Acquisition Regulation (FAR) at the time of award. BLS officials furnished the auditors with direct evidence to explain the manufacturer/reseller relationship; however, this is not reflected in the report. In any case, management will take corrective action to ensure to ensure that documentation that should be in contract files is present.

Price Reasonableness. Page 5 of the revised draft report also identifies three contracts lacking sufficient evidence of adequate price reasonableness determinations to support three awarded contracts; however, the report acknowledges in a footnote that the auditors did not assess whether or not the costs associated with those contracts was actually reasonable. OASAM contract file DOLJ109630254 did not have the required price determination document. However, all the other files listed did have the appropriate documentation. Although the auditors may not agree with the contracting officers’ price reasonableness determinations, it is misleading to imply that price reasonableness determinations did not exist for all four contracts listed. Making price reasonableness determinations involves some subjective analysis based on various factors and that information will vary depending on the circumstances. Taking into consideration that only one out of the 67 contracts was actually missing a price determination document (even though the auditor disagrees with its rationale), the percentage of files

containing determinations is actually approximately 99 percent. Finally, as noted elsewhere in this response, the absence of a price determination document in one file does not provide proof that the price was in fact unreasonable.

The analysis in support of this finding also suffers from technical flaws. For example, page 5 of the revised audit report cites as the basis for its conclusion provisions of FAR Parts 14 and 15. The contracts at issue were awarded under FAR Parts 12 and 13. Therefore, the reasoning used for the report's conclusion with regard to the finding is in error. FAR Part 14 is Sealed Bidding and FAR Part 15 is Contracting by Negotiation, neither of which are applicable to the four awards reviewed. In any case, management will take corrective action to ensure that documentation that should be in contract files is present.

Based on the forgoing, management disagrees with the report's conclusions finding fault with the price reasonableness of the contracts audited.

Within the Scope of the Initial Contract Concerns, Price Reasonableness Determination, Clarity of Statements of Work. Pages 6 and 7 of the revised draft report (first bullet) state that the statement of work for OASAM Contract# DOLJ079526604, Modification 12 did not contain a clear description of work, the file did not contain evidence of a price reasonableness determination, and that the purpose of some of the line items in the Price/Cost Schedule was not clear. In addition, this contract modification was listed on page 6 as being outside the scope of the initial contract. The auditor's conclusion that the statement of work for Modification 12 was unclear does not make it so for the intended audience. Some statements of work can be very complex and highly technical. The program office prepared the statement of work, and it was later reviewed by the contracting officer and found to be sufficient. Notably, under the FAR contractors can submit questions and request clarification regarding portions of the statement of work that are unclear to them. In this case, the contractor did not ask for clarifications regarding the subject statement of work and has performed to the program agency's satisfaction.

Finally, we note that a sufficient price determination memorandum was included in the file for Modification 12. As previously stated, although the auditors may not agree with the contracting officers' price reasonableness determination, it is misleading to imply that it did not exist. In any case, management will take corrective action to ensure that documentation that should be in contract files is present.

Contract Ceiling. On page 7 (second bullet) of the report, Contract # DOLJ081A20618, Modification #11 was cited not for exceeding the competed and negotiated ceiling value of the contract, but rather a clause that stated "under no circumstances" would funding be increased by more than 10 percent a year. It must be noted that this statement was not required by statute, regulation, or policy. The contracting officer is well within his/her authority to increase contract funding pursuant to FAR 52.243-2 Changes – Cost Reimbursement. The modification was recommended for approval by the Department's Procurement Review Board (PRB), which includes a representative from the Office of the Solicitor, to ensure that procurement action is legally sufficient. More importantly, the PRB's recommendation was approved the Department's Chief Acquisition Officer (CAO) who, by means of Secretary's Order 2-2009, has the authority to prescribe "regulations, policies and procedures regarding the solicitation and award of, and overseeing the administration of, all Departmental acquisitions...." Inasmuch the increase was not prohibited by statute or regulation and was well within the authority of the

CAO, it is misleading to suggest that the authorized funding increase was inappropriate or impermissible. This finding implies that the Department should have conducted a new acquisition, at considerable delay and enormous expense, rather than use the same vendor already available to strategically provide the same services—an unnecessary waste of limited resources and taxpayer dollars. In any case, management will take corrective action to ensure to ensure that documentation that should be in contract files is present.

Equitable Adjustment was Within the Contracting Officer's Authority. Page 7 of the report states that “under the direction of a Program Office [VETS], OASAM-OPS issued one modification for a VETS contract as an equitable adjustment to a contract...for work that exceeded the contracting officer's authorization.” The report indicates that the program agency directed the contractor to perform without the contracting officer's knowledge. When the contracting officer discovered the unauthorized activity, they correctly issued a stop work order. The original contract award was for less than \$300,000. The contractors (System and Information Services Corporation) submitted a claim for increased costs for travel and labor cost totaling over \$500,000 above the original amount established by the contract. The claim submitted by the contractor stated increased costs were attributable to directions given by the VETS program office for travel to more locations as part of their information gathering and for additional interviews than originally identified in the statement of work. This extra travel increased the contractor's cost of performance. There were also other cost increases due to direction given to the contractor by VETS.

The contracting officer had the authority to process this action as an equitable adjustment because the contracting officer verbally authorized the contractor to perform the work. The work performed was within the general scope of the contract and therefore no ratification was required. The contracting officer made a determination that no ratification was required, which was within his/her authority since a verbal order to proceed was issued. In accordance with FAR 1.602-3, an unauthorized commitment occurs when a Government representative who lacks the authority to enter into an agreement on behalf of the Government does so with a contractor. When this occurs, ratification by the contracting officer is required. In this instance, the contracting officer had the authority to act verbally instructed the contractor to proceed. Therefore, an unauthorized commitment did not occur. The condition at FAR 1.602-3(c)(3) was not present; therefore, the contracting officer determined that an equitable adjustment was in the best interest of the Government.³

Finding 2—DOL could not demonstrate it checked the Excluded Parties List System (EPLS), documents conflict of interest certifications, and performed higher levels of review.

The premise of this finding is based on the absence of documentation in the files reviewed and not on direct evidence of contracts awarded to vendors on the excluded parties list; the presence of conflicts of interest; or improperly awarded contracts or modifications.

In addition, the report's analysis in support of the finding should be more accurate and complete:

³ This contract was part of a prior investigation conducted by the OIG that revealed contracting abuses for which management took firm corrective action. In the context of this audit the issue raised is a narrow technical one: whether a ratification or equitable adjustment was the correct remedy.

EPLS. Page 8 of the report identifies 24 contracts⁴ and modifications for which the component agencies could not demonstrate that they checked EPLS for potential suspended or debarred awardees prior to contract award. The report also states that the OIG checked the EPLS and confirmed that no contracts were awarded to suspended or debarred firms. A contracting officer's signature on the award and the required responsibility determination documents demonstrate EPLS was checked. Although inclusion of EPLS documents in the contract file is not a FAR requirement, and therefore not a procurement violation, it is an internal DOL procedure for quality control used to confirm the EPLS was checked. In any case, management will take corrective action to ensure to ensure that documentation that should be in contract files is present.

Conflict of Interest Certifications. Page 9 of the revised draft report states that 23 contracts⁵ did not contain conflict of interest certifications, 19 of which were contracts to SBA 8(a) firms. The revised report further states that the FAR does not exempt agencies from verifying conflict of interest certifications to SBA 8(a) contracts. However, the revised draft report fails mention that conflict of interest "certifications" are not required by the FAR. FAR Subpart 3.101-1 requires that Government procurements should avoid any actual or appearance of conflict of interest, but does not require "certification." Therefore, the revised report's FAR reference for the "certification" requirement is erroneous.

The revised report also states that Department of Labor Manual Series (DLMS) Chapter 2, Section 835A requires that program officials responsible for other than full and open competition explain any past or existing business or personal relations with a proposed contractor or certify that none exist. However, the referenced 19 SBA Section 8(a) contracts by statute are not subject to requirements of full and open competition. Therefore, the DLMS provision cited is inapplicable to those contracts.

Lastly, the OIG report makes reference to a Senior Procurement Executive (SPE) Memorandum, dated December 30, 2008, which requires contracting officers to document conflict of interest certifications made by program officials for sole source contracts. The Senior Procurement Executive memorandum specifically states the sole source requirement must fit within one of the seven circumstances specified by FAR 6.302 for open market buys or FAR 8.405-6 for GSA Schedule actions. The referenced 19 Section 8(a) contracts were awarded in accordance with FAR Part 19.805, are under the total dollar value for competition in accordance with FAR Part 19.805, and are not considered open market buys or GSA Schedule actions.

In any case, management will take corrective action to ensure to ensure that documentation that should be in contract files is present.

Documentation of Higher Level Reviews. Page 10 of the report states that a higher level of review was not conducted on 45 contracts totaling \$45 million.⁶ It should be noted that this is not a FAR requirement, and therefore not a procurement violation, but an internal office procedure instituted by the Office of Procurement Services starting in 2010. In any case, management will take corrective action to ensure to ensure that documentation that should be in contract files is present.

⁴ Eleven contracts for OASAM-Dallas; 8 contracts for OASAM-OPS; 3 contracts for BLS; and 2 for ETA.

⁵ Twelve contracts for OASAM-OPS; 10 for ETA; and 1 contract for BLS.

⁶ Thirty-three contracts for OASAM-OPS; 6 contracts for OASAM-Dallas and 6 contracts for ETA.

Finding 3—*The Department had not updated its procurement regulations and guidance, and did not develop detailed and standardized procedures for EPLS, higher level review, and conflict of interest.*

Use of the Standards. Page 10 of the revised report states that DOL had not developed detailed and standardized procedure for three of the areas reviewed and that consistency and quality of DOL’s procurement function was heavily dependent on its component agencies. This aspect of the report attempts to make an argument for the development of Department-wide standardized procedures, using the *Standards* to be followed by all DOL contracting offices regardless of the type of goods or services they procure. The Department’s procedures and policies are set forth in the DOLAR and the applicable DLMS—together comprising more than 80 pages as listed below. Together, these procedures address the full range of procurement policy and rules, including EPLS, higher level review and conflict of interest. The sources of these Department-wide methods and procedures are:

- Department of Labor Acquisition Regulation (DOLAR, 48 CFR 2900 (31 pages)
- DLMS 2, Chapter 830, Procurement Management Program (18 pages)
- DLMS 2, Chapter 830, Section 838 and 839, Contracts Greater than 5 Years and Multi-year Contracts (10 pages)
- DLMS 2, Chapter 888, DOL Federal Acquisition Certification In Contracting Program (11 pages)
- DLMS 2, Chapter 889, DOL Acquisition Certification for Contracting Officer Technical Representative Program (12 pages)

These policies and procedures are available on LaborNet and variously cited in the draft audit report.

Although management agrees that there are DOL procurement policies and procedures that need to be updated, management disagrees with the premise that this draft report shows that any findings were caused by a lack of using the *Standards*.

With regard to the OIG’s recommended use of the *Standards*, the report does not show how the Department is not in compliance. Management contends that the issuance of the previously mentioned DOLAR, DLMS and Contracting Officer Notices meet the *Standards* requirements of “developing the detailed policies, procedures, and practices to fit [DOL’s contracting] operations....” Going forward, we intend to continue complying with this requirement as we update the appropriate acquisition policies and procedures as needed.

Over the last several years, the FAR has been revised to streamline the procurement process and to allow flexibility within the various procurement offices. It is management’s position that the FAR, combined with current DOL guidance, provides sufficient guidance for DOL contracting offices.⁷

⁷ Per FAR Subpart 1.101, the Federal Acquisition Regulations System is established for the publication of uniform policies and procedures for acquisition by all executive agencies. FAR 1.302 provides that agency acquisition regulations shall be limited to those necessary to implement FAR policies and procedures within the agency; and additional policies, procedures, solicitation provisions, or contract clauses that supplement the FAR to satisfy the

Procurement Oversight and Management Reviews. With regard to the report’s misgivings about procurement oversight on page 12, for FY 2011, reviews were conducted for Women’s Bureau and VETS contracts, and follow-up reviews of the ETA and BLS contracting functions were conducted. For FY 2012, reviews have been completed for BLS, MSHA and OASAM Atlanta, and reviews for OASAM Philadelphia, Dallas, Chicago, San Francisco, and the Office of Procurement Services are scheduled.

Management also objects to the statement on page 13 that “DOL’s lack of procurement oversight exposed DOL to both financial and operational risk” - after citing that Senior Procurement Executive has conducted 19 procurement management reviews. None of the report’s findings identified any contracts that were awarded improperly or any contract funding that was spent inappropriately. As discussed elsewhere in this response, the statement on the same page that the “OIG estimated DOL could have used \$17.5 million in FY 2010 procurement funds more efficiently and that DOL could use future procurement funds more efficiently if DOL takes action to implement our recommendation” is not supported by the report’s analysis.

Audit of MSHA Contracting, 2011. Reference is also made in the report’s analysis for this finding to previous OIG Audits of MSHA and Job Corps procurement activities. Again, the average reader would not know anything of the remedial actions taken by management in response to those previous audits. With this in mind, the following update is provided:

In response to the OIG’s February 2011 audit of MSHA,⁸ the Agency, with direct assistance and input from the CAO, Senior Procurement Executive, and DOL Procurement Executive:

- Hired a new cadre of contracting professionals that meet the FAC-C requirements that now manage the MSHA acquisition operation—an undertaking initiated by the detail of a senior procurement official from OASAM-OPS, and the corresponding reassignment of the former MSHA contracting officer to a staff position in another agency.
- Implemented new management procedures to require concurrence by the MSHA 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.
- Instituted a new monthly tracking report the MSHA Acquisition Management Division to the Director of Administration and Management, with quarterly reports to the MSHA Assistant Secretary to verify that DOL policy and procedures have been met.
- Implemented 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.

specific needs of the agency. More importantly, FAR 1.304 states that agencies shall control and limit the issuance of agency acquisition regulations and, in particular, local agency directives that restrain the flexibilities found in the FAR and shall not shall not unnecessarily repeat, paraphrase, or otherwise restate material contained in the FAR or higher-level agency acquisition regulations. The areas referenced in this report—EPLS, higher level review, and conflict of interest—are already covered by the FAR and the policies and procedures previously mentioned and, with the exception of updating applicable DOL policies and procedures, would disregard the FAR’s guidance against duplicative regulation.

⁸ Audit Report Number Report No. 05-11-001-06-001, MSHA’s Controls Over Contract Awards Need Strengthening.

- Ensured that all MSHA Contracting Officers have either taken or are enrolled in training to achieve Federal Acquisition Certification in Contracting (FAC-C) Level II certification.
- Received from OASAM training on appropriations law requirements, the DOLAR, and the DLMS during the second quarter of FY 2011 to address deficiencies identified in the audit report. The training was mandatory for all MSHA acquisition personnel (refresher training will take place annually).
- Reached agreement with the Office of the Solicitor (SOL) to extend the existing Memorandum of Agreement for SOL's review of proposed solicitations for an additional three years.

Notably, the OIG accepted these corrective actions as responsive to the audit report's recommendations.

Audit of Job Corps Contracting, 2008. In September 2008, the OIG issued Audit Report Number Report No. 04-08-003-01-370, *Transfer of Job Corps Program Strengthened Procurement Processing But Improvements Are Needed to Ensure Fair and Open Competition*. According to the report, "the transfer of the Job Corps program from ETA to [the Office of the Secretary] strengthened Job Corps procurement and contracting practices through the separation of procurement and program functions. In addition, fewer deficiencies were noted in selected contract awards and procurement actions after the transfer."

In sum, the audit report found that management had *improved* procurement operations for this component. The OIG also accepted management's corrective actions for the deficiencies cited in the report. In addition, in 2010 the Office of Job Corps was realigned back to the Employment and Training Administration. Included in this reorganization was the creation of a stand alone procurement office, headed by a Senior Executive Service manager, with centralized authority over all ETA contracting, to include Job Corps contracting, in lieu of allowing the contracting function to return to the field components of Job Corps as in the past. A key purpose in this organizational structure was to establish a clear segregation of duties between program procurement staff that buying goods and services and program officials that use those goods and services, as well as provide strong oversight and direction to the ETA procurement activity.

Finally, as part of the analysis of this finding the report reviews management's recent history of Procurement Management Reviews. Procurement Management Reviews are a form of accountability oversight conducted by management to help ensure sound procurement practices are being implemented. Within the last four years, formal procurement reviews have been conducted and recommended improvements have been initiated in the BLS, MSHA, and ETA procurement offices. As previously mentioned, for FY 2011, reviews were conducted for Women's Bureau and VETS contracts, and follow-up reviews of the ETA and BLS contracting functions were conducted. For FY 2012, reviews have been completed for BLS, MSHA and OASAM Atlanta, and reviews for OASAM Philadelphia, Dallas, Chicago, San Francisco, and the Office of Procurement Services are scheduled.

OIG Recommendation: The Assistant Secretary for Administration and Management update DOL's procurement regulations and guidance; and develop detailed and standardized procurement procedures using the Standards for Internal Control in the Federal Government and input from the component agency officials.

As noted at the outset, management acknowledges that any process can be improved and it will take appropriate action to update its Department-wide policies and procedures to address the findings outlined in the draft report. With this in mind, management will take the following actions:

DLMS 2-830 and the DOLAR are Department-wide policy and regulations. The DOLAR was last updated in 2004 and DLMS 2-830 in 2008. DLMS 2-830 is scheduled to be updated in FY 2012, starting with the issuance of a draft for comment during the 4th quarter. Management will also obtain input from the component agencies. The DOLAR is also scheduled to be updated in FY 2013, starting with the issuance of a draft for comment by the 1st quarter of FY 2013. In the course of reviewing and updating these policies and regulations, management will consider the *Standards* as an informed but not controlling source.

Finally, management will take the initiative to develop and issue clarifying guidance on conflict of interest statements by 4th quarter of FY 2012.

While unrelated to this audit, management has also issued the following guidance to improve the Department's overall procurement program in FY 2012:

- Include appropriate provisions in contracts that places on contractors the affirmative duty to inform the contracting officer of suspected procurement violations, including: (1) any circumstance in which the contractor is directed to hire or contract with a particular person or entity to provide services under a contract; (2) any circumstance in which the contractor is directed to provide services outside the scope of the contract awarded; and (3) any other suspected or known violations of procurement laws or procedures. The contracting officer will notify the Procurement Executive who will then be responsible for investigating these claims and taking appropriate action.
- For select agencies, require the agency and the Contracting Officer's Technical Representative to submit a statement certifying any task order they submit is properly within the scope of the contract and that there is no conflict of interest. Any dispute between the contractor and the contracting agency with respect to the proper scope of work will be resolved by the Contracting Officer. Any matters that cannot be resolved at that level will be arbitrated by the Procurement Executive.
- Completed additional procurement training for both DOL senior executive staff, as well as acquisition staff at all levels of the organization focusing on ethical and procurement integrity "do's and don'ts," and lessons learned.

Be assured that nothing in this response is intended to suggest that management does not take seriously and value the recommendations of the OIG. In addition, management recognizes and accepts that, while acquisition authority is decentralized among several agencies and those agencies have responsibilities for their procurement activities, OASAM has oversight responsibilities for the Department. In this regard, the OIG's review and recommendations are helpful to the Department's stewardship of its contracting resources.

As always, we appreciate the opportunity to provide input and look forward to the continued collaboration with your office. If you have any questions or comments please contact me at (202) 693-4040 or have your staff contact Al Stewart, Procurement Executive, at Stewart.Milton@dol.gov or (202) 693-4021.

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Appendix E

Acknowledgements

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