

U.S. Department of Labor

Office of Inspector General—Office of Audit

**OFFICE OF THE ASSISTANT SECRETARY
FOR ADMINISTRATION AND MANAGEMENT**



THE DEPARTMENT OF LABOR'S CONTROLS OVER SOLE SOURCE PROCUREMENTS NEED STRENGTHENING

**Date Issued: September 30, 2008
Report Number: 03-08-002-07-711**

BRIEFLY...

Highlights of Report Number: 03-08-002-07-711, to the Assistant Secretary for Administration and Management, issued September 30, 2008.

WHY READ THE REPORT

The Office of Inspector General (OIG) conducted a performance audit of sole source procurement practices in the U.S. Department of Labor (DOL).

Federal regulations require full and open competition for the award of government contracts, and allow only a limited number of exceptions to this rule. In DOL, the Office of the Assistant Secretary for Administration and Management (OASAM), is responsible for the overall implementation of the Department's procurement program and ensures that the program complies with the appropriate laws and regulations. DOL has a decentralized procurement structure with the Mine Safety and Health Administration (MSHA), the Employment and Training Administration (ETA), the Bureau of Labor Statistics (BLS), OIG and OASAM having their own procurement authority. OASAM has overall responsibility to ensure these agencies adhere to procurement regulations and procedures.

WHY OIG DID THE AUDIT

The purpose of our audit was to answer the following question:

Were proper procurement procedures followed when awarding sole source contracts?

READ THE FULL REPORT

To view the report, including the scope, methodology, and the Deputy Assistant Secretary for Operations' response, go to:

<http://www.oig.dol.gov/public/reports/oa/2008/03-08-002-07-711>

September 2008

THE DEPARTMENT OF LABOR'S CONTROLS OVER SOLE SOURCE PROCUREMENTS NEED STRENGTHENING

WHAT OIG FOUND

DOL could not demonstrate the basis for awarding contracts without full and open competition was appropriate for 41 of the 62 (66 percent) sampled sole source contracts. Specifically, we found proper procedures were not followed in one or more of the following instances: justifications to award sole source contracts were missing; inadequate, or lacked the required reviews and approvals; documentation of the fair and reasonable price determination for sole source contracts was insufficient; required conflict of interest certifications were not obtained from the program officials requesting the sole source contract; and there was no evidence that the contracting officer submitted the offering notice to the Small Business Administration (SBA) for a SBA 8(a) sole source award.

The audit also disclosed that OASAM could not locate 5 of 40 contract files we requested because it did not have an effective inventory control system. Without these files, DOL cannot provide a complete history of the procurement actions or support the basis for decisions and actions taken throughout the acquisition process.

WHAT OIG RECOMMENDED

We recommend the Assistant Secretary for Administration and Management implement policies and procedures that require: appropriate higher level reviews for sole source contracting actions; agency internal quality control processes; OASAM implement a comprehensive oversight plan to monitor agency procurement programs; and OASAM implement an effective inventory control system to account for all procurement files.

In response to the draft report, OASAM's Deputy Assistant Secretary for Operations expressed concern that the report gives a misimpression of the Department's procurement practices. The Deputy Assistant Secretary stated that while there is always room for improvement, the Department's procurement practices are sound. However, the Deputy Assistant Secretary generally agreed with the recommendations.

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Executive Summary

The Office of Inspector General (OIG) conducted a performance audit of sole source procurement practices in the U.S. Department of Labor (DOL). Federal regulations require full and open competition for the award of government contracts, and allow only a limited number of exceptions to this rule. In DOL, the Office of the Assistant Secretary for Administration and Management (OASAM), is responsible for the overall implementation of the Department's procurement program and ensures that the program complies with the appropriate laws and regulations. DOL has a decentralized procurement structure with the Mine Safety and Health Administration (MSHA), the Employment and Training Administration (ETA), the Bureau of Labor Statistics (BLS), OIG and OASAM having procurement authority. OASAM has overall responsibility to ensure these agencies adhere to procurement regulations and procedures.

We designed the audit to answer the following question:

Were proper procurement procedures followed when awarding sole source contracts?

In fiscal year (FY) 2007, DOL awarded 809 sole source contracts totaling over \$47.8 million.¹ We sampled 62 of these sole source contracts.

Results

Our audit disclosed that for 41 of the 62 (66 percent) sampled sole source contracts totaling \$15.5 million, DOL could not always demonstrate the basis for awarding the contract without full and open competition was appropriate. For these 41 sole source contracts, totaling \$14.1 million, proper procedures were not followed in one or more of the following instances:

- Justifications to award sole source contracts were missing, inadequate, or lacked the required reviews and approvals (21 occurrences);
- The documentation of the fair and reasonable price determination for sole source contracts was insufficient (29 occurrences);
- Required conflict of interest certifications were not obtained from the program officials requesting the sole source contract for 100 percent of the contracts audited (62 occurrences); and

¹ This does not include micro purchases, modifications, actions with \$0 obligation, de-obligating actions, task orders, delivery orders, and procurement actions by OIG.

- There was no evidence that the contracting officer submitted the offering notice to the Small Business Administration (SBA) for a SBA 8(a) sole source award (1 occurrence).

We also determined general procurement procedures were not always followed for 35 of the 62 (56 percent) contracts. Our audit disclosed that: (1) There was no evidence that the Excluded Parties List System (EPLS) and the Central Contractor Registration list (CCR) were searched prior to awarding the contract (21 occurrences for the EPLS and 12 occurrences for the CCR); (2) the contract period of performance was prior to the contract award date (18 occurrences); (3) there was no evidence that DOL agencies publicized contract award notices in FedBizOpps (7 occurrences); and (4) the award amount of one contract exceeded the warrant authority of the contracting specialist who signed it (1 occurrence).

These occurrences resulted from a control environment that did not ensure adherence to applicable procurement procedures, nor were the decisions to award sole source contracts adequately documented. We found inadequate higher level review in 25 of 62 (40 percent) sole source contracts audited. We also found agencies did not have an internal quality control review process of their procurement activities and OASAM did not have a consistent program for performing external monitoring reviews of other agency procurement offices. By awarding sole source contracts and not following general contracting procedures, OASAM could not demonstrate that it made the best decisions in awarding these sole source contracts to carry out DOL activities.

In addition, OASAM could not locate 5 of 40 (13 percent) contract files we requested because OASAM did not have an effective inventory control system in place. Without these files, DOL cannot provide a complete history of the procurement actions or support the basis for decisions and actions taken throughout the acquisition process. Further, DOL would be unable to provide information for reviews, investigations, litigation, or Congressional and Freedom of Information Act inquiries.

Recommendations

In summary, we recommend the Assistant Secretary for Administration and Management develop and implement policies and procedures that require: appropriate higher level reviews for sole source contracting actions with emphasis on the issues identified in this report; agency internal quality control procedures be established and performed; and OASAM to develop and implement a comprehensive oversight plan to monitor agency procurement programs. In addition, OASAM should implement an effective inventory control system to account for all procurement files at all times.

Agency Response

In response to the Draft Report, the Deputy Assistant Secretary for Operations, Senior Procurement Official, agreed to issue appropriate guidance to address our recommendations by the second quarter of FY 2009.

However, the Deputy Assistant Secretary disagreed with two conclusions in the report. He disagreed that a sole source justification for a \$1 million contract did not have the proper approvals (See Finding 1, A.3). The Deputy Assistant Secretary stated this was inaccurate because the agency submitted the proposed justification to the DOL Procurement Review Board (PRB) and it was approved by the Chief Acquisition Officer. The second was the finding that no conflict of interest certifications were provided by program officials requesting the sole source contracts (See Finding 1, C). The Deputy Assistant Secretary responded that conflict of interest certifications are provided for actions requiring PRB review and are maintained in PRB files.

OIG Conclusion

Concerning the justification that did not have the required approvals for the \$1 million sole source contract, the DLMS makes a distinction between a proposed noncompetitive acquisition that is submitted to the PRB for a review and a final award made by a contracting officer. It states that the primary function of the PRB is to serve as a senior-level clearing house to review proposed noncompetitive acquisitions and assistance instruments and that review by the PRB and approval by the CAO only authorizes the initiation of a noncompetitive acquisition. It further states that the CAO approval is not the final determination for use of "other than full and open competition." Final determination and award is made by the contracting officer after the CAO approval is obtained and the noncompetitive action is publicized. In this instance, the contract justification was not approved by both the Competition Advocate and the contract officer.

Concerning the conclusion that no conflict of interest certifications were provided by program officials requesting the sole source contract, we are aware that conflict of interest certifications are provided for actions requiring PRB review and are maintained in PRB files. However, the certifications are used only in those cases where the proposed contracting actions are submitted to the PRB. PRB review and recommendation is only required for proposed contracts exceeding the simplified acquisition threshold (over \$100,000). DLMS-2, Chapter 835 requires the conflict of interest certification for all requests for other than full and open competition.

Our finding and recommendations remain unchanged.

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U.S. Department of Labor

Office of Inspector General
Washington, DC 20210



September 30, 2008

Assistant Inspector General's Report

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The OIG conducted a performance audit of DOL's sole source procurement practices. Our objective was to answer the following question.

Were proper procurement procedures followed when awarding sole source contracts?

To accomplish our audit, we reviewed 62 sole source contracts - 60 randomly selected and 2 judgmentally selected (contracts over \$1 million), totaling \$15.5 million which were awarded by DOL in FY 2007. Our audit did not include micro-purchases, modifications, actions with \$0 obligation, deobligating actions, task orders, delivery orders, and procurement actions by OIG. Therefore, we made our selection from a universe of 809 sole source contracts totaling over \$47.8 million. The 62 sole source contracts covered awards by four agencies: OASAM (36), MSHA (18), ETA (6), and BLS (2). See Exhibit A for more details.

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

We found the majority of sole source contracts audited (41 of 62) had insufficient justification or lacked other documentation required for sole source awards. In addition, procedures required for all procurement actions were not followed for 35, or 56 percent, of audited contracts.

Results and Findings

Objective – Were proper procurement procedures followed when awarding sole source contracts?

Finding 1 - DOL did not always appropriately justify sole source procurements and follow the FAR and DOL requirements.

Federal laws and regulations emphasize the importance of competition in awarding contracts. Federal Acquisition Regulation (FAR) policy requires, with limited exceptions, agencies to promote full and open competition in awarding Government contracts. FAR and Department of Labor Manual Series (DLMS) provisions require justification for awards that are not competed. In DOL, OASAM is responsible for the Department's procurement program. This includes ensuring that OASAM and the other agencies that have procurement authority (BLS, ETA, MSHA, and OIG) perform procurements in accordance with all appropriate laws and regulations. The results of our audit of 62 sole source contract files show that a high percentage were awarded that did not comply with FAR and DLMS justification requirements.

In 41 of the 62 (66 percent) sampled sole source contracts totaling \$15.5 million DOL could not always demonstrate that the basis for awarding the contract without full and open competition was appropriate. The 41 sole source contracts, totaling \$14.1 million, contained one or more of the following compliance deficiencies with the FAR and Department justification requirements. (See Exhibit B for the 41 contracts and the problems found.)

- Justifications to award sole source contracts were missing (10 occurrences), inadequate (7 occurrences), or lacked the required reviews and approvals (4 occurrences);
- The documentation of the fair and reasonable price determination for sole source contracts was insufficient (29 occurrences);
- Required conflict of interest certifications were not obtained from the program officials requesting the sole source contract for 100 percent of the contracts audited (62 occurrences); and
- There was no evidence that the contracting officer submitted the offering notice to the SBA for a SBA 8(a) sole source award (1 occurrence).

We also found compliance deficiencies with general FAR and DOL procurement requirements in 35 of the 62 (56 percent) contracts audited. (See Exhibit C for the 35 contracts and the problems found.)

- There was no evidence that the EPLS and the CCR list were searched prior to awarding the contract (21 occurrences for the EPLS and 12 occurrences for the CCR);
- The contract period of performance was prior to the contract award date (18 occurrences);
- There was no evidence that DOL agencies publicized contract award notices in FedBizOpps (7 occurrences); and
- The award amount of one contract exceeded the warrant authority of the contracting specialist who signed it (1 occurrence).

These deficiencies occurred because of: (1) weaknesses in DOL's management oversight of compliance with the FAR and Department requirements; and (2) inadequate documentation of the justifications for awarding sole source contracts. In 25 of the 62 (40 percent) sole source contracts audited, there were inadequate higher level reviews for the procurement actions. Additionally, the agencies had no internal quality control review process of their procurement activities, and OASAM did not have a consistent program for performing external monitoring reviews of other agency procurement offices. As a result, there is increased risk DOL may award sole source contracts inappropriately and, not receive the best price for the purchased product or service. DOL needs to have effective internal controls in order to limit sole source procurements and comply with all FAR and DOL requirements.

All executive branch agencies are required to follow policies and procedures in the FAR² when purchasing goods and services. The FAR Part 6, Competition Requirements, contains the requirements to promote full and open competition in the acquisition process and identifies seven exceptions³ permitting other than full and open competition. The exceptions are:

1. Only one responsible source and no other supplies or services will satisfy agency requirements.
2. Unusual and compelling urgency.
3. Industrial mobilization; engineering, developmental, or research capability; or expert services.
4. International agreement.
5. Authorized by statute.
6. National security.
7. Public interest.

The FAR also provides additional exceptions for certain types of contracts and these criteria are described in more detail in the findings below.

² Issued as Chapter 1, Title 48 of the Code of Federal Regulations.

³ See FAR 6.302.

To determine if DOL appropriately awarded sole source contracts according to the FAR and Department requirements, we sampled 60 randomly selected and 2 judgmentally selected sole source contracts awarded in FY 2007. We judgmentally selected the two sole source contracts because they were more than \$1 million. The audit did not include micro-purchases (which are procurements of \$3,000 and less), modifications, actions with \$0 obligation, de-obligating actions, task and delivery orders, and procurement actions performed by OIG. The following discusses the audit results of 62 sole source contracts.

A. Justifications to Award Sole Source Contracts Were Missing, Not Adequate, or Did Not Have the Required Reviews and Approvals.

In 21 of the 62 (34 percent) sole source contracts we found:

- 10 did not have the required justification;
- 7 had justifications that did not adequately support the reasons for deciding to award the contract without competition; and
- 4 did not have the required reviews and approvals.

1. Sole Source Contracts Did Not Have The Required Justification.

There were 10 sole source contracts awarded without a justification as required by FAR. The FAR provides different requirements for the various types of sole source procurements. These types of procurement are:

- Above the Simplified Acquisition Threshold – more than \$100,000;
- Simplified Acquisition Threshold – at or below \$100,000; and
- Federal Supply Schedule.

Five of the sole source contracts awarded without justification were above the simplified acquisition threshold, four were below the threshold and one was an award from the Federal Supply Schedule.

The FAR contains several requirements for sole source procurements. These requirements include:

- FAR 6.302 provides the circumstances permitting other than full and open competition.
- FAR 6.303-1 (a) (1) requires for any sole source contract, the contracting officer shall justify it in writing, certify its accuracy and completeness, and obtain the approval required in the FAR 6.304.

- FAR 6.303-2 establishes the required contents of these justifications. Each justification must contain minimum information that the FAR covers with 12 specific elements. For a justification to be complete, each of the 12 elements must be addressed.

The FAR does make provisions for awards at or below the simplified acquisition threshold which reduces the amount of evidence required to justify sole source contracts. Specifically, FAR 13.106-3(b)(3) *Special Situations*, requires the contracting officer to include additional statements explaining the absence of competition if only one source is solicited and the acquisition does not exceed the simplified acquisition threshold.

In effect, the FAR requires a written explanation to justify why only one contractor was considered for the award and the contracting officer should include a basis for price reasonableness for an acquisition that does not exceed the simplified acquisition threshold.

Regarding the five contracts that were above the simplified acquisition threshold, OASAM awarded three contracts totaling \$3.7 million and MSHA awarded two contracts totaling \$505,000 without the required sole source justifications.

In one instance OASAM awarded a sole source contract on June 21, 2007, for \$189,312 to a construction contractor for work at several buildings at a Job Corps center. The reason for the sole source award was an unusual and compelling urgency. However, the contract file did not contain a sole source justification or any other document describing the circumstances for unusual and compelling urgency. The file only had the Job Corps program official's memorandum requesting the OASAM contracting official to prepare the sole source justification document. OASAM contracting officials said the memorandum was the documentation for sole source justification but added the document was missing key elements. We concluded this was not a justification to support the sole source award.

Regarding the four contracts that were below the simplified acquisition threshold, MSHA awarded three contracts totaling \$29,580 and ETA awarded one contract for \$7,500. None of these four contract files contained written sole source justifications explaining the absence of competition. MSHA officials were able to explain to us the reasons for the sole source awards but they did not document them in the contract files. ETA agreed that the justification for the sole source award should have been prepared.

The FAR provides different justification requirements for awards from the Federal Supply Schedule. For sole source procurements in which competition was restricted using the Federal Supply Schedule, the FAR requires that an agency must justify its action. Specifically, FAR 8.405-6 provides the requirements for limited sources justification and approval.

OASAM awarded a sole source contract for \$1,240,150 from the Federal Supply Schedule for technical support with OASAM's internet website services. However, OASAM did not prepare the required limited source justification. OASAM concurred with our conclusion.

2. Sole Source Justifications Did Not Adequately Support the Reasons for Deciding to Award the Contract Without Competition.

We found 7 sole source justifications did not contain an adequate explanation for limiting competition. Four of these contracts were awards under the simplified acquisition threshold and three were awards from the Federal Supply Schedule.

The four awards under the simplified acquisition threshold totaled \$79,795. The files did not contain documentation to support the statement explaining absence of competition. Therefore, we could not determine whether or not the contracting officer adequately demonstrated that the procurement should have been awarded without competition.

For sole source procurements under the simplified acquisition threshold, FAR 13.106-1 (b) (1) states contracting officers may solicit from one source if they determine the circumstances of the contract action deem only one source is reasonably available (e.g., urgency, exclusive licensing agreements, brand name or industrial mobilization).

In one instance, OASAM awarded a \$20,000 contract for expert services. The file documentation cited "only one responsible source" and "unusual and compelling urgency" as the reasons for the sole source award. However, there was no evidence or explanation to support the unusual and compelling urgency, except a statement saying agency's testing case backlog and expectation of many additional FY 2007 testing cases required the services of the vendor. According to the documentation, the contractor was the only responsible source because "...efforts were made to solicit for open competition, and many outside experts with this background are not interested in working with the government as Plaintiff." However, the documentation had no information to support the statement that only one source was reasonably available. OASAM management agreed that the explanation for absence of competition was not documented.

Regarding the three sole source contracts awarded from the Federal Supply Schedule, BLS, MSHA and OASAM each awarded one contract that did not have adequate documentation to support the justification used to restrict competition. The three contracts totaled \$124,542.

When using the Federal Supply Schedule to award sole source contracts, FAR 8.405-6(b), requires the agencies' justification to show that only one source was capable of responding due to the unique or specialized nature of the work; the new work was a logical follow-on to an original Federal Supply Schedule order, or that an urgent and compelling need existed, and following the ordering procedure would have resulted in unacceptable delays.

In one instance, BLS used the Federal Supply Schedule to award a sole source contract of \$21,467 for storage services. The agency justified the award on the basis that no other vendor could fulfill the requirement based on a Request for Quotation posted on the General Services Administration (GSA) e-buy site from the previous year. This justification was not adequate because it was not based on current information. BLS officials agreed but explained that they received the procurement request less than a month before the contract was needed. Therefore, under these circumstances, they felt that relying on the results of last year's Request for Quotation was reasonable enough to award the purchase order as a sole source.

3. Sole Source Justifications Were Not Reviewed and/or Approved.

There were 4 sole source contracts totaling more than \$4.2 million that included justifications without one or more of the required reviews and approvals.

FAR 6.304 (a) provides the following approval requirement for sole source justifications:

Contracts not exceeding \$550,000 – approved by the contracting officer.

Contracts over \$550,000 but not exceeding \$11,500,000 - approved by the competition advocate or a senior procurement executive of the agency. (In DOL, the Senior Competition Advocate is designated by the Deputy Assistant Secretary for Operations, OASAM.)

DOL established the Procurement Review Board (PRB) as a senior-level clearinghouse to review proposed noncompetitive acquisitions and assistance instruments. The provisions under the PRB are covered under DLMS-2, paragraph 836. PRB reviews and recommends the approval or disapproval for the following types of proposed sole source acquisitions to the Chief Acquisition Officer (CAO):

- Acquisitions over the simplified acquisition threshold, which are to be awarded under "other than full and open competition" procedures.
- Acquisitions over the simplified acquisition threshold using a make and model or "brand name description."
- Amendments to any order under a Blanket Purchase Agreement that exceed the original negotiated order by \$100,000 or more are to be treated as sole-source actions.

DLMS-2, paragraph 836 F(1) provides that the CAO approval is not the final determination for the use of sole source. Before the sole source contract is awarded, the justification for the sole source should be prepared in accordance with FAR 6.304 as cited above.

Four sole source contracts had justifications without the required approvals and certifications.

In one instance, ETA awarded a \$1 million sole source contract to a university in which the justification required by FAR 6.303 was not approved and signed by neither the contracting officer nor the Competition Advocate. The justification indicated there was only one responsible source and no other supplies or services would satisfy the agency requirements.

Another example found MSHA did not submit the sole source award proposal to the PRB for review and recommendation and to the CAO for approval. Further, the justification was not signed by the contract officer. The sole source contract was \$107,681 for safety equipment and training devices. MSHA management told us that they could not wait for PRB approval because the need was an unusual and compelling urgency and that any delay would have caused serious damage to MSHA's ability to carry out its enforcement mission. However, MSHA did not document these circumstances in the contract file. Additionally, while the DLMS-2 allows for exceptions, urgency was not one of them. The justification in the contract file was not signed by any MSHA official or reviewed by the PRB and approved by the CAO. MSHA contracting officials told us the contract file contained an email showing the contracting officer approved the justification. The email from the contracting officer stated "I saw the sole source justification and have no problem with it." However, we concluded this was not sufficient to meet the FAR requirements because it does not have a signature and does not certify that the justification is accurate and complete.

With Federal Supply Schedule awards, the FAR 8.405-6 (a) (h) (2), requires that a proposed order exceeding \$550,000, but not exceeding \$11.5 million, include a justification that is approved by the Competition Advocate of the activity placing the order.

OASAM placed a sole source order under the Federal Supply Schedule for a \$769,470 contract to purchase security x-ray machines for the DOL National Office. The limited source justification did not have the required approval by the Competition Advocate. OASAM officials told us this occurred because the contracting officer forgot to obtain the approval.

B. Documentation of the Fair and Reasonable Price Determination for Sole Source Contracts Was Not Sufficient.

In 29 of the 62 (47 percent) sole source contracts, there was either no written determination for fair and reasonableness of the contract price, or there was inadequate support for the determination. The following table provides the award method, the number of contracts tested, and the number of exceptions.

Fair and Reasonable Price Determination by Type of Award		
Type of Award	Number of Contracts	
	Tested	Exceptions
Above the simplified acquisition threshold	7	2
At or below simplified acquisition threshold	24	16
Federal Supply Schedule	11	1
SBA 8(a) contractors	20	10
Total	62	29

Above the Simplified Acquisition Threshold

In 2 of the 7 (28 percent) sole source contracts above the simplified acquisition threshold, there was an insufficient determination that the contract price was fair and reasonable for 1 contract and inadequate support for the determination for the other contract. The two sole source contracts totaled \$2,513,081.

The FAR 15.402 (a) requires contracting officer to purchase supplies and services from responsible sources at fair and reasonable prices.

In one instance, OASAM awarded a sole source contract for \$2,405,400 to a service-disabled veteran-owned small business (SDVOSB) construction contractor without a complete fair and reasonable price determination. According to a memo in the file, the price was determined to be fair and reasonable in comparison to a government estimate. However, the government estimate was not in the contract file. OASAM officials concurred with our conclusion and said it occurred because of an oversight by the contracting specialist.

The second instance involved a MSHA sole source contract that did not have the required PRB review as mentioned earlier in this report. MSHA awarded the \$107,681 sole source contract for safety equipment and training devices without performing a fair and reasonable price determination. The file contained a quote from the contractor for each item purchased but there was no published price listing or any other method to determine price reasonableness. Consequently, there was no evidence the contracting officer verified the quoted prices were published prices. MSHA officials told us they did not determine if the price was fair and reasonable because this is a single source vendor and they set the pricing for both industry and government. Although MSHA documented this in the contact file, we concluded that obtaining a quote from a single contractor does not ensure that the prices are fair and reasonable.

At or Below Simplified Acquisition Threshold

In 16 of the 24 (66 percent) sole source contracts below the Simplified Acquisition, there were inadequate determinations of whether or not the cost to the Government will be fair and reasonable.

The FAR 13.106-3 (a) requires that before making an award under the simplified acquisition threshold, the contracting officer must determine that the proposed price is fair and reasonable. The DOL Acquisition Regulations, 48 CFR, Part 2953.101, requires DOL agencies to use the Simplified Acquisition Documentation Checklist, DL 1-2216, to document all acquisitions at or below the simplified acquisition threshold. Part II of the checklist covers the basis for price reasonableness. Additionally, the FAR 8.602 (a) (1) requires that before purchasing items from the Federal Prison Industries (FPI), agencies shall conduct market research. The agencies should determine whether the FPI item is comparable to supplies available from the private sector that best meet the Government's needs in terms of price, quality, and time of delivery.

The 16 sole source contracts without adequate price determinations totaled \$322,196. Specifically, we found:

- Two contract files did not contain any documentation that determinations were made as to whether the cost to the Government would be fair and reasonable.
- Five contract files had partially completed Simplified Acquisition Documentation Checklists. Specifically, Part II was either not completed or did not have the required supporting information. The files did not contain any other documentation to support price determination.
- Six contract files did not have sufficient information to support that the determination as to whether the cost to the Government would be fair and reasonable. For example, there was information to indicate that the price reasonableness was based on market research and/or established market price, but there was no evidence in the file that the market research was conducted. OASAM officials told us that the FAR does not require this level of documentation to support price reasonableness determination.
- Two contract files had inadequate documentation to support the determination of whether the cost to the Government would be fair and reasonable. The determination for one of the contracts stated only that the total cost appeared reasonable for the effort involved. The determination for the other contract stated that since the contractor is the sole manufacturer of this product, they have set the price.
- One contract file for a purchase from the FPI did not have documentation comparing its prices to private sector prices. There was no written determination that items purchased from FPI were comparable to the supplies available from private sector.

Federal Supply Schedule

We found 1 of the 11 (9 percent) sampled contracts awarded using the Federal Supply Schedule contracts did not have a determination that the contract represented the best value.

The FAR 8.405-2 (d) requires the agency to determine if the price is reasonable for contracts using the Federal Supply Schedule that require a statement of work or services priced at hourly rates.

MSHA awarded a sole source contract for \$100,000 using the Federal Supply Schedule in which they did not perform a fair and reasonable price determination. The contract was for a fixed price of \$20,000 per month for 5 months for services that required hourly rates. MSHA management told us GSA already determined the prices to be fair and reasonable. We concluded that there was no evidence to support that the contract represented the best available value.

SBA 8(a) Contractors

We found that 10 of the 20 (50 percent) SBA 8(a) contracts audited were either awarded without fair market price estimates or that the estimate lacked supporting documentation. The 10 SBA 8(a) contracts totaled \$6,180,250.

The FAR 19.807 (a) requires contracting officers to estimate the fair market price of the work to be performed for contracts awarded under the SBA 8(a) program.

There were two SBA 8(a) contracts awarded without an estimate of the fair market price. MSHA awarded one of the contracts for \$552,032 and OASAM awarded the other for \$996,255. In each instance, the contract files did not contain evidence to support a fair market price estimate. MSHA management stated that they did not have to estimate the fair market price because SBA conducts the fair and reasonable determination for prices when the vendor is certified as competent for the procuring agency. OASAM management concurred with our conclusion that they needed to estimate fair market prices.

Eight SBA 8(a) contracts did not have adequate documentation to support the fair market price estimate. The following are examples of conditions that support our conclusion:

- For one contract awarded by MSHA, a document in the contract file showed that the price reasonableness was determined based on Service Contract Act wage rates. However, the contract price was based on an hourly wage rate of \$25.35 which was higher than the Service Contract Act hourly wage rate of \$14.03. The contract file did not contain an explanation of the reasonableness of the burden price (contractor's overhead burden applied to the wage rate). MSHA officials

told us that they did not have to determine price reasonableness because they based the contract price on the GSA schedule.

- For one contract awarded by BLS, a document in the contract file showed that the reasonableness of the price was based on market research. However, there were no documents in the file to support the market research. BLS official concurred that they should have documented the market research.
- For one contract awarded by ETA, a memo to the contract file stated that the contracting officer reviewed the proposal and found it to be reasonable and consistent with other task order contracts. However, the memo did not identify the other task order contracts that were compared. ETA officials agreed that they should have documented the other task orders used for the comparison.

C. Program Officials Requesting the Sole Source Contract Did Not Provide Conflict of Interest Certifications.

The required conflict of interest certifications were not obtained from the program officials requesting the sole source contract for all 62 of the contracts we audited.

DLMS – 2, paragraph 835 (A) requires the program official responsible for an "other than full and open competition" request or a request for contracted advisory and assistance services shall, as part of the request, explain any past or existing business or personal relationships with the proposed recipient or certify that none exists. This requirement applies to all sole source contracts.

None of the contracting agencies were aware of this DLMS-2 requirement. The program official responsible for the sole source award request is required to certify that no conflicts exist. The contracting officer should ensure the certification is obtained and included in the contract file. Without this certification, there is risk of an undisclosed business or personal relationship that could exist between the responsible program official and the vendor which could result in the government not receiving the best price and service.

D. No Evidence That the Contracting Officer Submitted the Offering Notice to the SBA for an SBA 8(a) Sole Source Award.

One SBA 8(a) sole source award by OASAM for \$100,328 did not have evidence that the contracting officer submitted the offering notice to the SBA.

For contracts above the simplified acquisition threshold, DOL is required to submit at least the offering letter to the SBA. DOL has a Partnership Agreement with SBA to expedite the award of SBA 8(a) contracts and still meet the procurement requirement. It allows DOL to assume acceptance by SBA if a notification of rejection is not issued within 5 working days of the receipt of the offer by SBA. However, it still requires DOL

to submit an offering letter for sole source requirements exceeding the simplified acquisition threshold.

* * * * *

The following discusses the compliance issues we found with general FAR and DOL procurement requirements for 35 of 62 (56 percent) sole source contracts audited. See Exhibit C for a list of the 35 contracts and the deficiencies.

E. There Was No Evidence DOL Agencies Searched the EPLS and the CCR List Prior to Awarding the Contract.

Our audit of the 62 sole source contracts found no evidence that DOL agencies searched the EPLS for 21 contracts awarded for \$4.8 million, or searched the CCR for 12 contracts awarded for \$5.4 million.

GSA operates the web-based EPLS and provides the names and addresses of all contractors debarred, suspended, proposed for debarment, declared ineligible, or excluded or disqualified. The FAR 9.405 requires that contracting officers review the EPLS immediately prior to awarding the contract to ensure that no award is made to a listed contractor who may be listed as debarred, suspended, or proposed for debarment. Additionally, contractors debarred, suspended, or proposed for debarment are excluded from receiving contracts, and agencies shall not solicit offers from, award contracts to, or consent to subcontracts with these contractors, unless the agency head determines that there is a compelling reason for such action.

The purpose of the CCR database is to increase visibility of vendor for specific supplies and services; and establish a common source of vendor data for the Government. The FAR 4.1103 requires agency contracting officers to verify that the prospective contractor is registered in the CCR database before awarding a contract or agreement.

We accepted copies of the EPLS and CCR printouts or a completed Simplified Acquisition Documentation Checklist as evidence that the agencies searched the EPLS and CCR data base. We found in one instance, the OASAM searched the EPLS for the wrong contractor. In another instance, a contract file contained a CCR printout but the contractor's registration had expired at the time of the award. OASAM officials informed us that they are in the process of establishing a DOL-wide best practice internal policy for documenting EPLS and CCR searches.

Without assurance that these searches were performed and documented, there is a risk that DOL could make awards to ineligible contractors. OIG agrees that OASAM's initiative to establish a DOL-wide best practice for documenting EPLS and CCR searches would minimize this risk.

F. The Contract Period of Performance Was Prior to the Contract Award Date.

In 18 of the 62 (29 percent) contracts audited totaling \$3.1 million, the performance start date was prior to the contract award date.

Under FAR, 4.101, only the contracting officer shall sign contracts on behalf of the United States. The contracting officer's name and official title shall be typed, stamped, or printed on the contract. The contracting officer normally signs the contract after it has been signed by the contractor.

We found 18 contracts in which the contract documents showed the period of performance start dates were prior to the contract award dates. We compared the contract award date (the date the contract officer signed the contract or the purchase order date) to the effective date shown on the contract cover. If the contract cover did not show the effective date, we used the performance start date found either on the contract cover or other file documents such as the statement of work and work orders. The following are examples of the exceptions found in the audit:

ETA awarded a \$7,500 contract to an individual for services after the performance start date. The period of performance start date was May 25, 2007, and the contract was signed on June 25, 2007. In effect, the contractor was performing services without contractual authorization.

In another instance, OASAM awarded a \$1,240,150 contract for technical support with DOL's web site. The contract period of performance was February 1, 2007, and the end date was March 31, 2007. The contracting officer signed the contract on May 16, 2007, more than three months after the performance start date. The contract cover form stated the award was for the final bridge contract with this contractor. An undated memo in the contract file showed that OASAM gave verbal authorization to the contractor to continue its services. We concluded the 3 month time lag between the start of the performance period and the date the contracting officer signed the contract was excessive.

G. There Was No Evidence that DOL Agencies Publicized Contract Award Notices in FedBizOpps.

Of the 38 contracts awarded for more than \$25,000, 7 (18 percent) contained no evidence that the agencies publicized the award in the FedBizOpps.

The Federal Business Opportunities internet website (FedBizOpps.gov) is the Government-wide single point of entry where Government business opportunities greater than \$25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public. The FedBizOpps is operated by GSA's Federal Supply Service.

The FAR 5.201(a) requires agencies to issue notices of proposed contract actions that exceed \$25,000 by transmitting them to FedBizOpps. According to the FAR 5.201(c), the primary purpose of the notice is to improve small business access to acquisition information and enhance competition by identifying contracting and subcontracting opportunities. The FAR contains exceptions to this requirement.

ETA, OASAM, and MSHA awarded the seven contracts, totaling more than \$4.7 million, which were not publicized in the Fed BizOpps. None of the seven contract files contained an explanation as to why the actions were not published prior to the awards.

H. The Amount of One Contract Exceeded the Warrant Authority of the Contracting Officer Who Signed It.

MSHA awarded a \$552,032 contract for clerical and administrative services. The contract officer who signed the contract only had warrant authority up to \$500,000.

According to FAR 1.603-3, contracting officers shall be appointed in writing on an SF-1402, Certificate of Appointment, which shall state any limitations on the scope of authority to be exercised, other than limitations contained in applicable law or regulation.

According to the contract officer's Certificate of Appointment, the level of contracting authority was not to exceed \$500,000.

* * * * *

The conditions described above in sections A through H resulted from a control environment that did not ensure adherence to applicable procurement procedures, nor were the decisions to award sole source contracts adequately documented. Specifically, we found internal control weaknesses in DOL's management oversight of the procurement process in relation to compliance with the FAR and Department requirements. The FAR requires additional documentation for sole source awards because of the associated risks. DOL procuring agencies have not implemented appropriate control procedures to address the additional risks with sole source awards.

Government Accountability Office (GAO) Standards for Internal Control in the Federal Government requires agencies to design their internal controls to assure that ongoing monitoring occurs in the agency's daily operations. The standards require monitoring to include regular management and supervisory activities, comparisons, reconciliations, and other actions people take in performing their duties.

Examples of weaknesses in DOL's supervisory and oversight internal controls for procurement included:

- Agencies had no evidence of a higher level review in 25 of the 62 (40 percent) contract files. The agencies lacked policies and procedures requiring

procurement officials to document higher level review of contract files for compliance with the FAR and DOL requirements before they are awarded. Agency procurement officials told us that the FAR has no specific requirements for such reviews. We conclude that a higher level review of sole source contracts before they are awarded is a critical internal control procedure to ensure adherence to FAR requirements.

- Agencies did not have an internal quality control review process of contract actions that were completed to ensure they were prepared and executed in accordance with FAR and DLMS-2. The review process would enable agencies to identify systemic problems that warrant corrective action in the agencies' policies and procedures. Agency procurement officials told us they left the implementation of quality control reviews to the discretion of the managers or division chiefs operating the procurement activity.
- OASAM did not consistently perform quality control reviews or oversight activities over the agencies that have procurement authority or of OASAM's own contracting operations. OASAM officials told us they try to perform procurement reviews of the agencies with procurement authority once every 3 years. However, of the agencies with procurement authority, OASAM reviewed BLS in FY 2007, MSHA in FY 2002, and is currently reviewing ETA. There was no documentation of prior ETA reviews. No formal reviews were conducted of the OASAM National and Regional Office operations.

Recommendations

We recommended the Assistant Secretary for Administration and Management:

1. Implement policies and procedures requiring:

- appropriate higher level reviews be performed and documented for sole source contracting actions with emphasis on the issues identified in this audit report;
- agency internal quality control procedures be established and performed to identify instances of non-compliance with the FAR and DOL requirements so that corrective action can be taken to reduce such incidents; and
- OASAM to develop and implement a comprehensive oversight plan for performing DOL-wide monitoring reviews.

Agency Response

In response to the Draft Report, the Deputy Assistant Secretary for Operations, Senior Procurement Official, agreed to issue appropriate guidance to address our recommendations by the second quarter of FY 2009.

However, the Deputy Assistant Secretary disagreed with two conclusions in the report. He disagreed that a sole source justification for a \$1 million contract did not have the proper approvals (See Finding 1, A.3). The Deputy Assistant Secretary stated this was inaccurate because the agency submitted the proposed justification to the DOL Procurement Review Board (PRB) and it was approved by the Chief Acquisition Officer. The second was the finding that no conflict of interest certifications were provided by program officials requesting the sole source contracts (See Finding 1, C). The Deputy Assistant Secretary responded that conflict of interest certifications are provided for actions requiring PRB review and are maintained in PRB files.

OIG Conclusion

Concerning the justification that did not have the required approvals for the \$1 million sole source contract, the DLMS makes a distinction between a proposed noncompetitive acquisition that is submitted to the PRB for a review and a final award made by a contracting officer. It states that the primary function of the PRB is to serve as a senior-level clearing house to review proposed noncompetitive acquisitions and assistance instruments and that review by the PRB and approval by the CAO only authorizes the initiation of a noncompetitive acquisition. It further states that the CAO approval is not the final determination for use of “other than full and open competition.” Final determination and award is made by the contracting officer after the CAO approval is obtained and the noncompetitive action is publicized. In this instance, the contract justification was not approved by both the Competition Advocate and the contract officer.

Concerning the conclusion that no conflict of interest certifications were provided by program officials requesting the sole source contract, we are aware that conflict of interest certifications are provided for actions requiring PRB review and are maintained in PRB files. However, the certifications are used only in those cases where the proposed contracting actions are submitted to the PRB. PRB review and recommendation is only required for proposed contracts exceeding the simplified acquisition threshold (over \$100,000). DLMS-2, Chapter 835 requires the conflict of interest certification for all requests for other than full and open competition.

Our finding and recommendation remain unchanged.

Finding 2 - OASAM Did Not Have Effective Internal Controls to Account for Contract Files

OASAM could not locate 6 of the 40 (15 percent) contract files at the time we requested the files for the audit. OASAM located 1 of the 6 contract files 13 weeks after our initial request, while the other 5 files were not located during our fieldwork. This occurred because OASAM did not have effective internal controls in place to ensure that contract files were accounted for at all times. Without these contract files, DOL cannot provide a complete history of the procurement action concerning the background on the basis for decisions and actions taken at each step in the acquisition process. Therefore, there is

no evidence to assure the sole source contracts were justified in accordance with the FAR and DOL requirements. Additionally, without these contract files, DOL cannot provide information for reviews, investigations, litigation, or Congressional and Freedom of Information Act inquiries.

The following are FAR requirements related to creating and maintaining contract files:

FAR 4.800 prescribes requirements for establishing, maintaining and disposing of contract files. The FAR 4.801, states in part that:

- (a) The head of each office performing contracting, contract administration, or paying functions shall establish files containing the records of all contractual actions.
- (b) The documentation in the files (see 4.803) shall be sufficient to constitute a complete history of the transaction.....
- (c) The files to be established include—
 - (1) A file for cancelled solicitations;
 - (2) A file for each contract; and

FAR 4.802(c) states:

Files must be maintained at organizational levels that ensure:

- (1) Effective documentation of contract actions;
- (2) Ready accessibility of principal users;
- (3) Minimal establishment of duplicate and working files;
- (4) The safeguarding of classified documents; and
- (5) Conformance with agency regulations for file location and maintenance.

FAR 4.802(d) states:

If the contract files or file segments are decentralized (e.g., by type or function) to various organizational elements or to other outside offices, responsibility for their maintenance must be assigned. A central control and, if needed, a locator system should be established to ensure the ability to locate promptly any contract files.

GAO "Standards for Internal Control in the Federal Government," provides that access to resources and records should be limited to authorized individuals, and accountability for their custody and use should be assigned and maintained. Further, all transactions and other significant events need to be clearly documented, and the documentation should be readily available for examination.

Our sample of contract files for the audit included 40 that were awarded by OASAM's Office of Procurement Services (OPS). OPS is responsible for performing OASAM procurement actions and maintaining its files. OPS could not locate 6 of the 40 contract

files at the time we requested them. These contracts totaled \$3,824,337. OPS located one of the contracts 13 weeks after our initial request.

OPS officials told us that they had procedures for maintaining contract files but they were not written. The officials said that contract files are stored in a secured file room after the contract is awarded. An electronic spreadsheet is used to log-in and track contract files. OPS officials told us that they implemented the contract log in December 2007, but they do not conduct any periodic inventories of the contract files.

According to OPS officials, possible causes for the missing files include:

- The contract specialist and contracting officer may not have filed the contract in the file room after the contract was awarded. There is no mandatory time frame to have the contract file filed after the award.
- An October 2007 re-organization of OPS changed the contract specialist's and contracting officer's assigned contracts. Therefore, it is possible the contracts are not with the contracting specialists and contracting officers who originally awarded them.
- OPS, including the file room, relocated in January 2007, and changed its filing method at that time. During the move, contract files may have been misfiled.

We concluded that OPS' internal controls over the accountability of contract files were not effective because they could not locate five contract files.

Recommendations

We recommend that the Assistant Secretary for Administration and Management:

2. Implement an effective inventory control system to account for all procurement files at all times.
3. Perform an inventory of contract files using the E-Procurement System (EPS) and the contract tracking sheet as a basis for identifying missing files, and take action to locate them.

Agency Response

In the response to the Draft Report, the Deputy Assistant Secretary for Operations stated that during the first quarter of FY 2009, OASAM will implement an appropriate inventory control system to account for all files. The response also stated that OASAM will conduct an inventory of all active contract files maintained by OPS and take action to locate or reconstitute those that are missing.

OIG Conclusion

Our finding and recommendations remain unchanged.



Elliot P. Lewis

Exhibits

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Exhibit A

Universe and Sampled Procurements by Agency and Acquisition Threshold

Agency Name	Contracts At or Below \$100,000		Contracts Over \$100,000		Total Contracts	
	No.	Amount	No.	Amount	No.	Amount
BLS	2	\$ 70,096			2	\$ 70,096
ETA	3	\$ 46,889	3	\$ 1,573,194	6	\$ 1,620,083
MSHA	14	\$ 400,580	4	\$ 1,164,714	18	\$ 1,565,294
OASAM	21	\$ 432,469	15	\$11,772,951	36	\$ 12,205,420
Total Sample	40	\$ 950,034	22	\$14,510,859	62	\$ 15,460,893
Total Universe	743	\$ 13,423,901	66	\$ 34,406,526	809	\$ 47,830,427
Percent of Universe	5%	7%	33%	42%	8%	32%

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Incidents of Non-Compliance With Sole Source FAR and DOL Requirements

Contractor Contract Number DOL Agency	Amount	No Justification	Justification Did Not Contain an Adequate Rationale	Justification Did Not Have the Required Approval and Certification	No Offering Notice to SBA of 8(a) Sole Source Award	No or Inadequate Determination for Fair and Reasonable Contract Price
Contracts over Simplified Acquisition Threshold						
1. BSI Contracting, Inc. DOLJ079624828 OASAM – SDVOSB	\$2,405,400	X		X		X
2. Facilities Development Corporation DOLJ079625786 OASAM – SDVOSB	\$1,089,156	X				
3. The University of Iowa DOLJ071A20492 ETA	\$1,000,000			X		
4. American Electric Power Company Inc. DOLJ074R21067 MSHA	\$400,000	X				
5. Macro-Z-Technology Company DOLJ079625514 OASAM	\$189,312	X				
6. CSE Corporation DOLJ074R21404 MSHA	\$107,681			X		X
7. Monongahela Power Company DOLJ074R21040 MSHA	\$105,000	X				
Total		5	0	3	0	2
Contracts at or below Simplified Acquisition Threshold						
8. Louis & Henry, Inc. DOLJ079624835 OASAM	\$96,535					X
9. Haver Analytics Inc. DOLB079425642 OASAM	\$52,495		X			
10. Panalytical Inc. DOLB074R21080 MSHA	\$36,684					X
11. UNICOR, Federal Prison Industries, Inc. DOLB074R21550 MSHA	\$34,906					X
12. Mucho Thomas P & Associates, Inc. DOLB074R21415 MSHA	\$32,463					X
13. Eugene Muller (Industrial & Educational Measures DOLB079E25437 OASAM	\$20,000		X			

Exhibit B
Page 2 of 3

Incidents of Non-Compliance With Sole Source FAR and DOL Requirements

Contractor Contract Number DOL Agency		Amount	No Justification	Justification Did Not Contain an Adequate Rationale	Justification Did Not Have the Required Approval and Certification	No Offering Notice to SBA of 8(a) Sole Source Award	No or Inadequate Determination for Fair and Reasonable Contract Price
Contracts at or below Simplified Acquisition Threshold (Continued)							
14.	Management Consulting Associates DOLB071A20598 ETA	\$20,000					X
15.	White Sands Technology, Inc. DOLB079624940 OASAM	\$16,128					X
16.	Videojet Technologies DOLB074R21076 MSHA	\$14,004					X
17.	NCS Pearson, Inc. DOLB079625114 OASAM	\$13,953					X
18.	Inter Parking Corporation DOLB07MR20330 MSHA	\$13,680	X				X
19.	Verizon Maryland DOLB074R21034 MSHA	\$12,600	X				X
20.	Saint Corporation DOLB079326098 OASAM	\$9,958					X
21.	Jean Dobbins DOLB071A20523 ETA	\$7,500	X				X
22.	Allegheny Surveys DOLB074R21171 MSHA	\$3,800		X			X
23.	Roadway Express Inc. DOLB07CE21080 OASAM	\$3,500		X			X
24.	Windstream Corp. DOLB074R21247 MSHA	\$3,300	X				X
25.	Elberton Granite Association, Inc. DOLB074R21183 MSHA	\$3,185					X
Total			4	4	0	0	16
Federal Supply Schedule Orders							
26.	Cascades Technologies Inc DOLF079425436 OASAM	\$1,240,150	X				
27.	American Science and Engineering Inc DOLF079626195 OASAM	\$769,470			X		

Incidents of Non-Compliance With Sole Source FAR and DOL Requirements

Contractor Contract Number DOL Agency	Amount	No Justification	Justification Did Not Contain an Adequate Rationale	Justification Did Not Have the Required Approval and Certification	No Offering Notice to SBA of 8(a) Sole Source Award	No or Inadequate Determination for Fair and Reasonable Contract Price
Federal Supply Schedule Orders (Continued)						
28. Technical Mgmt Services DOLF074R21358 MSHA	\$100,000		X			X
29. First Federal Corp DOLF072J11808 BLS	\$21,467		X			
30. Xerox Corporation DOLF07CF20999 OASAM	\$3,075		X			
Total		1	3	1	0	1
SBA 8(a) Contracts						
31. Tribalco, LLC. DOLJ079625632 OASAM	\$1,527,931					X
32. ABN Technologies DOLJ079625278 OASAM	\$1,512,828					X
33. ABN Technologies DOLJ079625492 OASAM	\$1,099,517					X
34. Tribalco, LLC. DOLJ079625724 OASAM	\$996,255					X
35. Concentric Methods DOLJ074R21557 MSHA	\$552,032					X
36. M. H. West & Co. DOLJ071A20601 ETA	\$250,000					X
37. B.I.G. Enterprises DOLJ079625357 OASAM	\$181,488					X
38. Radius Technology DOLB079E24844 OASAM	\$100,328				X	
39. Consolidated Safety Services, Inc. DOLB072J11936 BLS	\$48,629					X
40. Total Contracting, Inc DOLB079E26334 OASAM	\$6,500					X
41. Aspen of DC, DOLB074R21561 MSHA	\$5,070					X
Total		0	0	0	1	10
Total for All 41 Contracts		10	7	4	1	29

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Incidents of Non-Compliance With General FAR and DOL Requirements

Contractor Contract Number DOL Agency		Amount	CCR Lists Not Searched	EPLS Not Searched	Period of Performance Was Before Contract Award	Award Notice Not Publicized in FedBizOpps	Warrant Authority Was Exceeded
Contracts Over the Simplified Acquisition Threshold							
1.	BSI Contracting, Inc DOLJ079624828 OASAM	\$2,405,400				X	
2.	Facilities Dev. Corp DOLJ079625786 OASAM	\$1,089,156	X	X		X	
3.	The Univ. Of Iowa DOLJ071A20492 ETA	\$1,000,000	X	X	X	X	
4.	American Electric DOLJ074R21067 MSHA	\$400,000	X	X	X		
5.	CMW & Associates DOLJ071A20599 ETA	\$323,194	X	X			
6.	Macro-Z-Tech Co. DOLJ079625514 OASAM	\$189,312		X			
7.	CSE Corporation DOLJ074R21404 MSHA	\$107,681		X		X	
8.	Monongahela Power DOLJ074R21040 MSHA	\$105,000		X	X		
Total			4	7	3	4	0
Contracts at or below the Simplified Acquisition Threshold							
9.	Louis & Henry, Inc DOLJ079624835 OASAM	\$96,535	X	X		X	
10.	Federal Tech Service DOLB074R21135 MSHA	\$93,140		X	X		
11.	Haver Analytics Inc DOLB079425642 OASAM	\$52,495				X	
12.	Panalytical Inc DOLB074R21080 MSHA	\$36,684			X	X	
13.	UNICOR, Fed Prison I DOLB074R21550 MSHA	\$34,906		X			
14.	Mgmt Consulting DOLB071A20598 ETA	\$20,000		X			
15.	Wheeling Jesuit Univ. DOLB07MR20434 MSHA	\$20,000	X	X			
16.	Malouf, Inc DOLB071A20578 ETA	\$19,389		X			
17.	Copper River Info DOLB079F26093 OASAM	\$18,856		X			

Incidents of Non-Compliance With General FAR and DOL Requirements

Contractor Contract Number DOL Agency	Amount	CCR Lists Not Searched	EPLS Not Searched	Period of Performance Was Before Contract Award	Award Notice Not Publicized in FedBizOpps	Warrant Authority Was Exceeded
Contracts at or below the Simplified Acquisition Threshold (Continued)						
18. White Sands Tech. DOLB079624940 OASAM	\$16,128			X		
19. Videojet Tech Inc. DOLB074R21076 MSHA	\$14,004			X		
20. Inter Parking Corp. DOLB07MR20330 MSHA	\$13,680	X	X	X		
21. Verizon Maryland DOLB074R21034 MSHA	\$12,600			X		
22. ESCGOV, Inc. DOLF079426304 OASAM	\$10,000			X		
23. Jean Dobbins DOLB071A20523 ETA	\$7,500	X	X	X		
24. OCE North America DOLB069E24698 OASAM	\$7,330			X		
25. FEMCO Inc. DOLB079K25123 OASAM	\$6,031			X		
26. Allegheny Surveys DOLB074R21171 MSHA	\$3,800			X		
27. Windstream Corp DOLB074R21247 MSHA	\$3,300			X		
28. Elberton Granite DOLB074R21183 MSHA	\$3,185		X			
Total		4	10	12	3	0
Federal Supply Schedule Orders						
29. Cascades Tech Inc. DOLF079425436 OASAM	\$1,240,150			X		
30. Technical Mgmt Services DOLF074R21358 MSHA	\$100,000	X	X	X		
31. Xerox Corporation DOLF07CF20999 OASAM	\$3,075			X		
Total		1	1	3	0	0
SBA 8(a) Contracts						
32. ABN Technologies DOLJ0796925492 OASAM	\$1,099,517		X			

Incidents of Non-Compliance With General FAR and DOL Requirements

Contractor Contract Number DOL Agency		Amount	CCR Lists Not Searched	EPLS Not Searched	Period of Performance Was Before Contract Award	Award Notice Not Publicized in FedBizOpps	Warrant Authority Was Exceeded
SBA 8(a) Contracts (Continued)							
33.	Tribalco, LLC. DOLJ079625724 OASAM	\$996,255	X				
34.	Concentric Methods, LLC. DOLJ074R21557 MSHA	\$552,032	X	X			X
35.	M. H. West & CO., Inc. DOLJ071A20601 ETA	\$250,000	X	X			
Total			3	3	0	0	1
Total for All Contracts			12	21	18	7	1

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Appendices

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APPENDIX A

BACKGROUND

The Competition in Contracting Act of 1984, 41 U.S.C 253, requires full and open competition for government contracts and has only a limited number of exceptions to this rule. Agencies are not permitted to use procurements without full and open competition (commonly referred to as sole source) unless they have written justification and specific statutory or regulatory authority exists for sole source or limited competition. Exceptions from the requirement for full and open competition must be justified in writing and authorized by the appropriate government official. Therefore, agencies should rarely seek to limit competition. *The Competition in Contracting Act* was promulgated in the FAR. FAR 6.3 permits contracting without providing for full and open competition under the following conditions:

- Only one responsible source and no other supplies or services will satisfy agency requirements
- Unusual and compelling urgency
- Industrial mobilization; engineering, developmental, or research capability; or expert services
- International agreement
- Authorized or required by statute
- National security
- Public interest

For simplified acquisitions (generally defined as awards at or below \$100,000), FAR 13.106 permits contracting officers to solicit from one source if they determine the circumstances of the contract action deem only one source is reasonably available (e.g., urgency, exclusive licensing agreements, brand name or industrial mobilization

When awarding sole source acquisitions, Federal agencies must generally justify such decisions in writing. Each justification must contain sufficient facts and rationale to justify the use of the specific authority cited. The FAR requires the justification contain the minimum amount of information and be approved in writing. Although simplified acquisitions awarded as sole source require less documentation, they still need statements explaining the absence of competition.⁴ For sole source procurements in which competition was restricted using the Federal Supply Schedule, the FAR requires that an agency must justify its action.⁵ The FAR contains separate and distinct sole source justification criteria for certain socio-economic small business owned programs including the SBA 8(a) firms that were included in our sample. Other programs, such as the SDVOSB, do not have separate sole source justification requirements.

The *Office of Federal Procurement Policy Act* requires the head of each executive branch agency to designate a competition advocate for the agency and for each

⁴ FAR 13.106-3(b)(3)

⁵ FAR 8.405-6

procuring activity of the agency whose responsibilities include promoting full and open competition. Agency competition advocates are required to review the contracting operations of the agency and identify and report to the agency senior procurement executive.

In DOL, OASAM, through the Department's Procurement Executive, is responsible for implementing the Department's procurement program and ensuring that the program is performing in accordance with the appropriate laws and regulations. The Department's procurement program is a decentralized structure with OASAM MSHA, ETA, BLS⁶, and OIG having their own procurement authority. OASAM's Business Operations Center has two units with procurement responsibilities.

The Office of Acquisition and Management Services (OAMS), establishes the procurement and grant policy for DOL. OAMS is responsible for implementing the DOL procurement oversight functions and the Competition Advocate responsibilities, administering the EPS, maintaining DOL procurement data in the Federal Procurement Data System-Next Generation (FPDS-NG), conducting procurement management reviews of regional and national offices, and providing support to the DOL PRB.

The OPS negotiates, awards, and administers contracts for most DOL Agencies.

DOL's procurement management information system is its internet web-based EPS. DOL implemented the EPS with the goal to streamline, standardize, and automate the procurement processes throughout the Department. The EPS supports multiple user groups, including requisitioners who are broadly grouped into the requisition, review, and approval functional user group, and acquisition specialists who are part of the functional power user group made up of other acquisition and contract management professionals, and budget, finance, and property management personnel.

According to data in the Department's FY 2007 EPS, DOL awarded 3,652 sole source procurement actions totaling more than \$251 million. This represented 13.9 percent of the \$1.84 billion DOL awarded from 10,763 procurement actions.⁷ We did not audit the accuracy of this data. One of our data reliability procedures showed there was risk about the accuracy of the data on the reported number and amount of sole source procurements. We found that the data field designating the extent of competition was not completed for 3,687 procurement actions totaling more than \$662.8 million. This represented 34 percent of the procurement actions and 36 percent of the total dollars awarded for FY 2007. See the Methodology section in this report for our work on data reliability.

⁶ BLS' procurement authority for open market procurements is not to exceed \$100,000 and service/delivery orders from Government-wide acquisition contracts is not to exceed \$500,000 per order.

⁷ This represented all procurement actions such as contracts, purchase orders, blanket purchase agreements, task orders, and modifications.

APPENDIX B

OBJECTIVE, SCOPE, METHODOLOGY, AND CRITERIA

Objective

The OIG conducted an audit of sole source procurement practices in the DOL to determine if sole source contracts were appropriately justified in accordance with FAR and Department requirements. Our audit objective was to answer the following question.

Were proper procurement procedures followed when awarding sole source contracts?

Scope

The audit scope was DOL contracts awarded in FY 2007. The universe of contracts DOL awarded for FY 2007 was 10,763 procurement actions totaling \$1.84 billion. Of this amount, DOL awarded 3,652 sole source procurement actions totaling more than \$251 million, which represented 34 percent of all procurement actions and 13.6 percent of the total dollars awarded. Of the 3,652 sole source procurement actions, we eliminated:

- micro-purchases, which are procurements of \$3,000 and less;
- actions with negative balances (de-obligating actions);
- actions with \$0 obligation;
- procurement actions performed by OIG's contracting office;
- modifications; and
- task orders and delivery orders.

The remaining sole source contracts totaled 809 procurement actions with awards valued at \$47.8 million. We selected 71 sole source contracts for testing, 68 randomly and 3 judgmentally because they were over \$1 million. This allowed us to select all contracts in the universe that were more than \$1 million. We tested 62 of the 71 sole source contracts selected because OASAM could not locate 5 contract files and 4 contract files were misclassified as sole source but were actually competed. The 62 sole source contracts tested totaled \$15,460,893, or 32 percent of the awarded amount for our universe of the 809 sole source contracts. See Exhibit A for detail on the universe and audited contracts for each agency and award method. We did not audit the contract costs to determine whether they were allowable, allocable, or reasonable with Federal regulations.

We conducted this performance audit in accordance with generally accepted government auditing standards. The auditing 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 designed and

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

We performed the audit field work from December 2007 to July 2008 at the following agencies in Washington, DC. - OASAM, BLS, and ETA. We also conducted field work at MSHA's National Office in Arlington, Virginia and OASAM's Philadelphia Regional Office in Philadelphia, Pennsylvania.

A performance audit includes an understanding of internal controls considered significant to the audit objectives and testing compliance with significant laws, regulations, and other compliance requirements. In planning and performing our audit, we considered whether internal controls significant to the audit were properly designed and placed in operation. This included reviewing DOL's policies and procedures for awarding sole source contracts. We confirmed our understanding of these controls and procedures through interviews and documentation review.

Methodology

In designing the audit, we identified criteria key to awarding sole source contracts in the FAR and the DLMS. We obtained OASAM technical bulletins that addressed sole source awards. We conducted procedural walkthroughs with staff and managers in OASAM's OPS to obtain an understanding of contracting procedures. We reviewed contract files to obtain an understanding of file contents and documentation unique to sole source awards.

In performing the audit, we evaluated internal controls used by OASAM for reasonable assurance that sole source contracts are awarded in accordance with FAR and DLMS. Our consideration of OASAM's internal controls for sole source procurement would not necessarily disclose all matters that might be reportable conditions. Because of inherent limitations in internal controls, misstatements, losses, or noncompliance may nevertheless occur and may not be detected. We assessed OASAM's quality assurance procedures and oversight of the DOL agencies that have been delegated contracting authority. In our assessment of controls related to contracting review processes we identified any quality procedures unique to sole source contracts.

To identify the universe of sole source contracts, we relied on contracting activity reported in DOL's EPS. We performed analytical procedures to assess the reliability of the EPS data. This consisted of comparing the awarded amounts of FY 2007 EPS contracting actions to amounts obligated in DOL's accounting system, Department of Labor Accounting and Related Systems. Although it was not possible to perform an absolute comparison of the award amounts in the two systems, we concluded differences were not significant and we could rely on EPS to contain all of DOL's contracting actions for FY 2007. We analyzed data fields in the EPS and found that the Extent Competed field, used to code whether contracts were competed, was not completed for 34 percent of the procurement actions and 36 percent of the awarded

amount of all procurement activity for FY 2007. Therefore, there was a risk that our universe of sole source contracts was not complete. We also compared data in the EPS to the FPDS-NG and found differences in the total number of contract actions and the total dollar amounts awarded. However, we determined that the EPS data was sufficient to use for the audit.

To determine if DOL complied with FAR and Department requirements for awarding sole source contracts, we sampled 68 randomly selected and 3 judgmentally selected sole source contracts awarded in FY 2007. We judgmentally selected the three sole source contracts because they were more than \$1 million and this allowed us to test all the contracts in our universe that were more than \$1 million. Of the 71 contracts in our sample, OASAM could not locate 5 contract files and the agencies misclassified 4 contracts as sole source when they were actually competed. Therefore, for our objective, we tested 62 sole source contracts totaling \$15,460,893.

In our testing, we reviewed all documentation in the contract file and used this as the basis for our conclusion on each FAR and DOL requirement tested.

Criteria

Federal Acquisition Regulation, March 2005, unless otherwise noted

- FAR, Part 4, Administrative Matters, January 3, 2006
- FAR, Part 5, Publicizing Contract Actions, May 19, 2006
- FAR Part 6, Competition Requirements, September 30, 2005
- FAR Part 8, Required Sources of Supplies and Services, September 30, 2005
- FAR Part 13, Simplified Acquisition Procedures, September 28, 2006
- FAR Part 15.4, Contract Pricing
- FAR Part 17, Special Contracting Methods
- FAR Part 19, Small Business Programs, January 3, 2006

Competition in Contraction Act of 1984, 41 United States Code (U.S.C.) 253

The Office of Federal Procurement Policy Act, 41 U.S.C 402

DLMS -2, Chapter 800, October 21, 1991

Department of Labor Acquisition Regulation System, Title 48, CFR 29

GAO Standards for Internal Control in the Federal Government, November 1999

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APPENDIX C

ACRONYMS AND ABBREVIATIONS

BLS	Bureau of Labor Statistics
CAO	Chief Acquisition Officer
CFR	Code of Federal Regulations
CCR	Central Contractor Registration
DLMS	Department of Labor Manual Series
DOL	U.S. Department of Labor
EPLS	Excluded Parties List System
EPS	E- Procurement System
ETA	Employment and Training Administration
FAR	Federal Acquisition Regulation
FedBizOpps	Federal Business Opportunities Internet Website
FPDS-NG	Federal Procurement Data System—Next Generation
FPI	Federal Prison Industries, Incorporated
FY	Fiscal Year
GAO	Government Accountability Office
GSA	General Services Administration
MSHA	Mine Safety and Health Administration
OAMS	Office of Acquisition Management Services
OASAM	Office of Assistant Secretary for Administration and Management
OIG	Office of Inspector General
OPS	Office of Procurement Services
PRB	Procurement Review Board
SBA	Small Business Administration
SDVOSB	Service-Disabled Veteran-Owned Small Business Program

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APPENDIX D

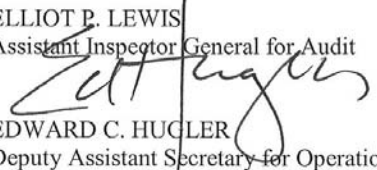
AGENCY RESPONSE TO THE DRAFT REPORT

U.S. Department of Labor

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



SEP 29 2008

MEMORANDUM FOR ELLIOT P. LEWIS
Assistant Inspector General for Audit

FROM: EDWARD C. HUGLER
Deputy Assistant Secretary for Operations,
Senior Procurement Official
SUBJECT: Audit of Sole Source Awards by DOL
Draft Report No. 03-08-002-07-711

This responds to the Office of Inspector General (OIG) September 24, 2008, draft audit report of the Department's sole source procurement practices in Fiscal Year (FY) 2007. The scope of the audit included the Office of the Assistant Secretary for Administration and Management (OASAM), Mine Safety and Health Administration (MSHA), Employment and Training Administration (ETA) and the Bureau of Labor Statistics (BLS). The following management responses reflect input from the respective DOL agencies.

Overall, we are concerned that the draft report gives a misimpression of the Department's procurement practices. While there is always room for improvement, the Department's procurement practices, we believe, are sound.

For example, to provide context the draft report should reflect that DOL has a very strong track record of competitively awarding contracts. In FY 2007, DOL awarded a total of \$1.6 billion competitively. According to a government-wide report issued by the Office of Management and Budget's (OMB) Office of Procurement Policy (OFPP), DOL ranked *second* in FY 2007 among Federal agencies by awarding 84 percent of the Department's contract funds available for competitive awards. The top performing agency (Department of Energy) awarded 85 percent, only 1 percent more than the Department of Labor. In FY 2005 and FY 2006, the Department was ranked *first* among the 18 Cabinet-level federal agencies, competing 86 percent of DOL's contract funds available for competitive awards for both fiscal years.

In addition, the draft report lacks perspective, focusing solely on "what's wrong" and nothing about "what's right." As noted in the draft report, DOL awarded 809 sole source contracts in FY 2007 totaling over \$47.8 million. In addition to being a small sample set, the discrepancies found in the audit comprise a small fraction (less than 8 percent) of all the requirements that comprise the Federal acquisition process.

For completeness and balance, the draft audit report should also acknowledge the work the Department has done to strengthen the DOL procurement program. For example:

- In FY 2008, improvements to DOL procurement policies and practices, including a DLMS change to add new provisions for approval of contracts exceeding five years; two DLMS changes to require increased training for contracting officers and contracting officer's

technical representatives; and monitoring of sensitive areas, such as advisory an assistant services.

- In addition, OASAM has reinvigorated its Office of Acquisition Management Services (OAMS) with attention to refining procurement policies and evaluating compliance with DOL and Federal requirements. Activities of this office include—
 - Reviews of DOL agency procurement activities, beginning with BLS (report issued October 11, 2007) and ETA (report issued September 19, 2008). Both reports included corrective actions to improve agency compliance with appropriate procurement laws and regulation and DOL policies;
 - A regular process of checking the GSA-operated Federal Procurement Data Systems (FPDS) to reconcile contract awards over \$100,000 recorded in this system with the actions approved by the Department's Procurement Review Board; and
- OASAM has likewise been active in providing guidance to DOL agencies—
 - By memorandum of April 15, 2008, the Assistant Secretary for Administration and Management (ASAM) provided guidance to the Office of Job Corps, the largest single entity acquiring goods and services at the DOL - \$1.3 billion in fiscal year 2007 - relating to PRB review requirements.
 - By memorandum of November 19, 2007, the ASAM provided an update to agency heads on PRB activities and specifically requested that agencies continue to prepare their requirements to facilitate competitive awards and, when that is not feasible, to provide the PRB with adequate documentation to make timely recommendations for award.
 - In April 2006 and October 2007 the Management Review Board was also briefed on the PRB activities as part of a DOL Procurement Update.
 - In November 2006 the DOL Procurement Executive issued a widely distributed e-mail notice relating to the use of the DOL Simplified Acquisition Checklists.

With the foregoing overarching comments in mind, management offers the following responses to the draft report's findings and recommendations:

Finding 1—DOL did not always appropriately justify sole source procurements and follow the FAR and DOL requirements.

A. Justifications to Award Sole Source Contracts Were Missing, Not Adequate, or Did Not Have the Required Reviews and Approvals.

1. Sole Source Contracts Did Not Have The Required Justification.

Management's Response: The report states that "there were 10 sole source contracts awarded without a justification as required by FAR." For accuracy and completeness, the report should also state that 84 percent of the files were compliant with this requirement.

As corrective action, during the first quarter of FY 2009 OASAM will issue appropriate guidance to DOL contracting officers reminding them to ensure appropriate justifications are included in the files.

2. Sole Source Justifications Did Not Adequately Support the Reasons for Deciding to Award the Contract Without Competition.

Management's Response: The report states that *"7 sole source justifications did not contain an adequate explanation for limiting competition."* For accuracy and completeness, the report should also state that 89 percent of the files were compliant with this requirement.

As corrective action, during the first quarter of FY 2009 OASAM will issue appropriate guidance to DOL contracting officers reminding them adequately to justify sole source requirements.

3. Sole Source Justifications Were Not Reviewed and/or Approved.

Management's Response: The report states that *"There were 4 sole source contracts totaling more than \$4.2 million that included justifications without one or more of the required reviews and approvals."* For accuracy and completeness, the report should also state that 94 percent of the files were compliant with this requirement.

The draft report also contains inaccuracies. For example, the draft report states, *"In one instance, ETA awarded a \$1 million sole source contract to a university in which the justification required by FAR 6.303 was not approved and signed by the contracting officer nor the Competition Advocate."* The report fails to appreciate that the action was submitted to the PRB—of which the Competition Advocate is a member—and was approved by the Chief Acquisition Officer (CAO) whose approval level is higher than the Competition Advocate. The CAO approval in this example complies with the FAR, which requires a Competition Advocate approval *unless there is a higher level approval required by the agency.*

As corrective action, during the first quarter of FY 2009 OASAM will issue appropriate guidance to DOL contracting officers reminding them to include the appropriate approvals in contract files.

B. Documentation of the Fair and Reasonable Price Determination for Sole Source Contracts Was Not Sufficient.

Management's Response: For accuracy and completeness, the draft report should make it clear that no instances were found of unfair or unreasonable pricing.

While there were instances where the documentation of the fair and reasonable price determination for sole source contracts was not fully satisfactory, the report fails to appreciate that contracting officers are required to determine that prices are fair and reasonable, but are also cautioned against obtaining more information than is necessary. FAR 15.402 (Pricing policy) states: *"Contracting officers must purchase supplies and services from responsible sources at fair and reasonable prices. In establishing the reasonableness of the offered prices, the contracting officer must not obtain more information than is necessary."* In practice, this means

that contracting officers can—and should—be able to use their knowledge of the market place, as appropriate, and not be expected to confirm each and every judgment with independent documentation when they are aware of current fair and reasonable pricing.

As corrective action, during the first quarter of FY 2009 OASAM will issue appropriate guidance to DOL contracting officers reminding them of the appropriate measures to document the file with fair and reasonable price determinations.

C. Program Officials Requesting the Sole Source Contract Did Not Provide Conflict of Interest Certifications.

Management's Response: The report states, *"The required conflict of interest certifications were not obtained from the program officials requesting the sole source contract for all 62 of the contracts we audited."*

What the report fails to appreciate is that Paragraph 8 of DOL Form DL 1-490, "Request for Recommendation by Procurement Review Board," contains the required conflict of interest certification required by program officials. The form specifically notes that the conflict of interest certification must be completed for each action. For all actions reviewed by the Procurement Review Board, the required certifications were obtained and are maintained in PRB files. The draft report needs to be corrected to reflect these facts.

As corrective action, during the first quarter of FY 2009 OASAM will issue appropriate guidance to remind contracting officials about conflict of interest certifications.

D. No Evidence That the Contracting Officer Submitted the Offering Notice to the SBA for an SBA 8(a) Sole Source Award.

Management's Response: The report states that *"One SBA 8(a) sole source award by OASAM for \$100,328 did not have evidence that the contracting officer submitted the offering notice to the SBA."*

The contracting officer has been counseled by management and this finding should be considered closed.

E. There Was No Evidence DOL Agencies Searched the EPLS and the CCR List Prior to Awarding the Contract.

Management's Response: The report states *"There Was No Evidence DOL Agencies Searched the EPLS and the CCR List Prior to Awarding the Contract."* The draft report fails to convey the facts with precision. In fact, 81 percent of the files audited were compliant with the CCR review requirement and 66 percent of the files reviewed were compliant with the requirement for EPLS searches.

It should also be understood that there is no regulatory requirement to document the file with this information. DOL does add a policy requirement that when completing a DOL Simplified Acquisition Checklist for actions under \$100,000 the checklist box be checked. As such, the audit finding should be conformed to the regulatory requirements and DOL policy.

As corrective action, during the first quarter of FY 2009 OASAM will issue appropriate guidance to remind contracting officials to complete the DOL Simplified Acquisition Checklist as required.

F. The Contract Period of Performance Was Prior to the Contract Award Date.

Management's Response: The report states that *"In 18 of the 62 (29 percent) contracts audited totaling \$3.1 million, the performance start date was prior to the contract award date."* Management acknowledges that there were instances of contracts which contained periods of performance that appeared to occur before the date the contract was signed by the contracting officer.

However, the draft report fails to account for legitimate explanations, such as valid awards made by a contracting officer where the award documentation is executed after a "verbal award." For example, the report states that *"...OASAM awarded a \$1,240,150 contract for technical support with DOL's web site. The contract period of performance was February 1, 2007, and the end date was March 31, 2007. The contracting officer signed the contract on May 16, 2007, more than three months after the performance start date. The contract cover form stated the award was for the final bridge contract with this contractor. An undated memo in the contract file showed that OASAM gave verbal authorization to the contractor to continue its services."* A contracting officer is authorized to commit the government based on a verbal award. Due to administrative error, the verbal award memorandum was undated. The absence of the memorandum's date, however, does not support the assumption that the contract period of performance was prior to the contract award date.

In addition, there are instances where the auditor assumed that the contractor began performance prior to the contract being signed where the program offices requested start date contained in the statement of work preceded the date the contract was signed by the contracting officer. Prior to concluding that the contractor's performance began before contract award, the actual start of the contractor's performance must be established to support the audit report's conclusion.

As corrective action, during the first quarter of FY 2009 OASAM will issue appropriate guidance to remind contracting officials to check all contract dates for consistency, fully document verbal awards, and ensure that contractors do not begin performance prior to contract award.

G. There Was No Evidence that DOL Agencies Publicized Contract Award Notices in FedBizOpps.

Management's Response: The report states, that *"Of the 38 contracts awarded for more than \$25,000, 7 (18 percent) contained no evidence that the agencies publicized the award in the FedBizOpps."* Once again, the audit report fails to acknowledge that 71 percent of the actions reviewed had no such issue.

As corrective action, during the first quarter of FY 2009 OASAM will issue appropriate guidance to remind contracting officials to include the appropriate FedBizOpps announcements in the contract file.

H. The Amount of One Contract Exceeded the Warrant Authority of the Contracting Officer Who Signed It.

Management's Response: Management concurs with this finding. MSHA has taken the appropriate corrective action. The contracting officer has been counseled and the award was reissued by a contracting officer having the appropriate warrant authority.

Finding 2—OASAM Did Not Have Effective Internal Controls to Account for Contract Files

Management's Response: The report states that "OASAM could not locate 6 of the 40 (15 percent) contract files at the time we requested the files for the audit. OASAM located 1 of the 6 contract files 13 weeks after our initial request, while the other 5 files were not located during our fieldwork."

As corrective action, during the first quarter of FY 2009 OASAM will take appropriate steps and issue guidance to ensure all contract files are accounted for, as more fully described in response to the draft report's recommendations. The contract files at issue have been reconstituted.

Recommendations

We recommended the Assistant Secretary for Administration and Management:

1. Implement policies and procedures requiring:

- appropriate higher level reviews be performed and documented for sole source contracting actions with emphasis on the issues identified in this audit report;
- agency internal quality control procedures be established and performed to identify instances of non-compliance with the FAR and DOL requirements so that corrective action can be taken to reduce such incidents; and
- OASAM to develop and implement an oversight plan for performing comprehensive DOL-wide monitoring reviews.

Management's Response: During the second quarter of FY 2009, OASAM will issue appropriate guidance to ensure:

- Appropriate higher review levels are established to ensure contract files contained appropriate documentation to address the issues identified in this audit report;
- DOL procurement officers are provided guidance on establishing internal quality control procedures to preclude instances of non-compliance with the FAR and DOL requirements; and
- OASAM will formalize its current practice of conducting procurement management reviews of all procurement offices on a three-year cycle.

2. Implement an effective inventory control system to account for all procurement files at all times.

Management's Response: During the first quarter of FY 2009, OASAM will implement an appropriate inventory control system to account for all contract files.

3. Perform an inventory of contract files using the E-Procurement System (EPS) and the contract tracking sheet as a basis for identifying missing files, and take action to locate them.

Management's Response: OASAM will conduct an inventory of all active contract files maintained by the Office of Procurement Services and take action to locate or reconstitute those that are missing.

cc: Patrick Pizzella, OASAM
Daniel Lacey, BLS
David Meyer, MSHA
Daphne Jefferson, ETA
Al Stewart, OASAM
Valerie Veatch, OASAM
Sandra Foster, OASAM

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