

U.S. Department of Labor

Office of Inspector General—Office of Audit

**OCCUPATIONAL SAFETY AND
HEALTH ADMINISTRATION**



PROCUREMENT VIOLATIONS AND IRREGULARITIES OCCURRED IN OSHA'S OVERSIGHT OF A BLANKET PURCHASE AGREEMENT

Date: March 31, 2009
Report Number: 03-09-002-10-001

BRIEFLY...

Highlights of Report Number: 03-09-002-10-001, *Procurement Violations and Irregularities Occurred in OSHA's Oversight of a Blanket Purchase Agreement*, to the Deputy Assistant Secretary for Safety and Health, dated March 31, 2009.

WHY READ THE REPORT

In response to a referral from the U.S. Department of Labor's (DOL) Solicitor concerning possible contracting improprieties, the Office of Inspector General (OIG) conducted a performance audit of a Blanket Purchase Agreement (BPA), and related task orders, established between the Occupational Safety and Health Administration (OSHA) and Global Management Systems, Incorporated (GMSI). The possible contracting improprieties involved using the BPA as a means to fulfill a request from then Assistant Secretary for Occupational Safety and Health, Edwin Foulke, Jr., to procure the services of Mr. Randy Kimlin.

WHY OIG CONDUCTED THE AUDIT

OIG conducted the audit to answer the following question:

Did violations and irregularities occur in OSHA's oversight of the BPA and related task orders?

READ THE FULL REPORT

To view the report, including the scope, methodology, and full agency response, go to: <http://www.oig.dol.gov/public/reports/oa/2009/03-09-002-10-001>

March 2009

PROCUREMENT VIOLATIONS AND IRREGULARITIES OCCURRED IN OSHA'S OVERSIGHT OF A BLANKET PURCHASE AGREEMENT

WHAT OIG FOUND

The OIG found violations and irregularities occurred in the administration of the BPA and the related task orders. OSHA circumvented Federal and DOL procurement requirements by using the GMSI BPA to obtain consulting services non-competitively from Mr. Kimlin, who was requested by then Assistant Secretary Edwin Foulke, Jr. This was not in the scope of the GMSI BPA. Additionally, OSHA did not have proper documentation to approve invoices submitted by GMSI for Mr. Kimlin's consulting services. Finally, OSHA allowed GMSI to invoice more hours than awarded for Mr. Kimlin and approved unallowable travel expenses incurred by Mr. Kimlin while commuting between his home in South Carolina and Washington, D.C., in violation of the terms of the BPA. As a result, OSHA cannot justify procuring Mr. Kimlin's consulting services nor demonstrate that the \$681,379 charged for his work was reasonable. At the time of our audit, OIG's Office of Special Investigations was investigating the matter.

WHAT OIG RECOMMENDED

The OIG recommended that the Deputy Assistant Secretary for Occupational Safety and Health: work with OASAM procurement officials to develop an internal policy for obtaining consulting services; recover \$681,379 paid to GMSI for Mr. Kimlin's labor and travel costs; and ensure OSHA managers and supervisors do not bypass control procedures for administering contracts.

HOW AUDITEE RESPONDED

The Deputy Assistant Secretary agreed with the recommendations except for the recovery of payments to the contractor, GMSI, for Mr. Kimlin's labor and travel costs. The Deputy Assistant Secretary stated that OSHA defers making a final response on the recommended recovery until the OIG's Office of Inspections and Special Investigations completes its investigation into this matter.

The response did not change the findings and recommendations.

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U.S. Department of Labor

Office of Inspector General
Washington, D.C. 20210



Assistant Inspector General's Report

Donald G. Shalhoub
Deputy Assistant Secretary for Occupational Safety and Health
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

In response to a referral from the U.S. Department of Labor's (DOL) Solicitor concerning possible contracting improprieties, the Office of Inspector General (OIG) conducted a performance audit of a Blanket Purchase Agreement (BPA), and related task orders, established between the Occupational Safety and Health Administration (OSHA) and Global Management Systems, Incorporated (GMSI). The Office of Assistant Secretary for Administration and Management (OASAM) awarded the BPA to GMSI on behalf of OSHA. The possible contracting improprieties involved using the BPA as a means to fulfill a request from then Assistant Secretary for Occupational Safety and Health, Edwin Foulke, Jr., to procure the services of Mr. Randy Kimlin.

The audit objective was to answer the following question:

Did violations and irregularities occur in OSHA's oversight of the BPA and related task orders?

The audit focused on the costs invoiced by GMSI to OSHA for Mr. Kimlin's time and travel. The amounts billed totaled \$681,379 for the period April 2006 through July 2008.

To accomplish the audit objective, we gained an understanding of the process and requirements for awarding the BPA and task orders to GMSI by interviewing OASAM procurement officials and OSHA officials involved in overseeing the BPA and task orders. We obtained and reviewed the invoices for Mr. Kimlin's labor and travel costs charged to determine if they were supported and allowable. We gained an understanding of the controls related to overseeing the BPA and task orders by interviewing OSHA officials and reviewing a judgmental sample of documentation used as part of their procedures to account for hours charged under the task order.

RESULTS IN BRIEF

Violations and irregularities occurred in the administration of the BPA and the related task orders. The scope of the GMSI BPA did not include consulting services; however,

Mr. Kimlin was authorized, through the task orders awarded against the GMSI BPA, to serve as a consultant to the then Assistant Secretary for OSHA. OSHA circumvented Federal and DOL procurement requirements by using the GMSI BPA to obtain consulting services non-competitively from Mr. Kimlin, who was requested by then Assistant Secretary Edwin Foulke, Jr. Additionally, OSHA did not have proper documentation to approve invoices submitted by GMSI for Mr. Kimlin's consulting services. Finally, OSHA allowed GMSI to invoice more hours than awarded for Mr. Kimlin and approved unallowable travel expenses incurred by Mr. Kimlin while commuting between his home in South Carolina and Washington, D.C., in violation of the terms of the BPA. As a result, OSHA cannot justify procuring Mr. Kimlin's consulting services nor demonstrate that the \$681,379 charged and approved for his labor hours and travel was reasonable for the work performed. Included in the \$681,379, were charges of \$153,161 for labor hours that exceeded the hours authorized in the task orders and \$95,658 for unallowable commuting costs. At the time of our audit, OIG's Office of Inspections and Special Investigations was investigating the matter.

In response to the draft report, the Deputy Assistant Secretary agreed to work with the OASAM procurement office to refine OSHA policies related to hiring contractors for advisory and assistance services and review controls and procedures for administering contracts. The Deputy Assistant Secretary did not fully agree with the recommended recovery of all costs paid to the contractor, GMSI, for Mr. Kimlin's labor and travel costs. He believes the disallowance of all costs associated with Mr. Kimlin is a broad rejection of the expense related to the work that was provided by Mr. Kimlin and is unnecessarily injurious to GMSI. The Deputy Assistant Secretary stated that the Agency defers making a final response to this recommendation until OIG's Office of Inspections and Special Investigations completes its current investigation into this matter and provides its findings to OSHA. However, the Deputy Assistant Secretary acknowledged that \$95,658 in commuting travel expenses for Mr. Kimlin was not allowed by terms of the BPA and OSHA will seek recovery of these costs from GMSI. See Appendix D for the entire response.

The Deputy Assistant Secretary's response did not change the audit findings and recommendations. Concerning the recovery from GMSI of \$681,379 total costs paid to Mr. Kimlin, the FAR 31.205-33(f) provides that fees for services rendered are allowable only when supported by evidence of the nature and scope of the services furnished. The FAR is supported by internal control standards for Federal Government that require agencies to document all transactions and other significant events and the documentation be readily available for examination. OSHA was not able to provide products or deliverables produced by Mr. Kimlin or independent records to support the labor hours charged.

RESULTS AND FINDINGS

Objective — Did Violations and Irregularities Occur in OSHA’s Administration of the BPA and Related Task Orders?

OSHA used the GMSI BPA as a means to fulfill a request from the then Assistant Secretary for Occupational Safety and Health, Edwin Foulke, Jr., to procure the consulting services of Mr. Randy Kimlin. Violations and irregularities occurred in the oversight of the BPA and the related task orders. The scope of the GMSI BPA did not include consulting services; however, Mr. Kimlin was authorized, through the task orders awarded against the GMSI BPA, to serve as a consultant to then Assistant Secretary Foulke. Additionally, OSHA did not have proper documentation to approve invoices submitted by GMSI for Mr. Kimlin’s consulting services. Finally, OSHA allowed GMSI to invoice more hours than awarded for Mr. Kimlin and approved unallowable travel expenses incurred by Mr. Kimlin while commuting between his home in South Carolina and Washington, D.C., in violation of the terms of the BPA. As a result, OSHA cannot justify procuring Mr. Kimlin’s consulting services nor demonstrate that the \$681,379 charged and approved for his labor hours and travel was reasonable for the work performed.

Finding 1 - OSHA Approved a Consultant Position Outside the Scope of the BPA

OSHA approved a consultant position outside the scope of the BPA. The Statement of Work in the BPA did not include the functions and responsibilities of a consultant. This occurred because OSHA wanted to expedite then Assistant Secretary Foulke’s request to procure the consulting services of Mr. Kimlin. The consultant position should have been procured separately as an Advisory and Assistance Contract, subject to the competition requirements under the Federal Acquisition Regulation (FAR) regulations and DOL requirements.

Federal law, the FAR, and DOL policy require that work outside the scope of an existing contract be competed. If the work is not competed, the acquisition should be adequately justified and approved by the Procurement Review Board and the Chief Acquisition Officer. Also, the FAR states a contract for consultant services should be awarded as an Advisory and Assistance Services contract. Specifically:

- The U.S. Code¹ states that a task order cannot change the scope of the original contract without a modification.
- The FAR² requires all acquisitions, unless they are within the scope of the original contract, to be competed unless it is supported by a written justification.

¹ Title 41, Public Contracts, Chapter 4, Procurement Procedures, Subchapter IV, Procurement Procedures, Section 253h(e)

² FAR Subpart 6.1, Full and Open Competition, 6.303-1(a)

- DOL policy³ requires any acquisition more than \$100,000 and not competed must be reviewed by the Procurement Review Board and approved by the Chief Acquisition Officer (CAO).
- The FAR⁴ requires a contract for consultant services to be issued as an Advisory and Assistance Service contract subject to a determination that sufficient personnel is not available within the agency to perform the services. Agencies may contract for advisory and assistance services, when essential to the agency's mission, to:

Obtain outside points of view to avoid too limited a judgment on critical issues;

Obtain advice regarding developments in industry, university, or foundation research;

Obtain the opinions, special knowledge, or skills of noted experts;

Enhance the understanding of, and develop alternative solutions to, complex issues;

Support and improve the operation of organizations; or

Ensure the more efficient or effective operation of managerial or hardware systems.

The BPA was awarded to GMSI to provide administrative management support to OSHA in the areas of management data, personnel management, program budgeting and planning, financial control, administrative management systems, and administrative services. The BPA was for firm fixed, labor hours category for time and material services and listed 16 different labor categories. The statement of work in the BPA and the task orders showed GMSI was responsible for providing administrative and support services. The following is a list of functions listed in the BPA statement of work:

- Provide clerical, secretarial, administrative, and analytical support to various OSHA offices, as requested.
- Support the data input and customer service functions for OSHA publication processing operation.
- Provide data input, information processing and systems management for financial management.

³ Department of Labor Manual Series (DLMS) 2, Chapter 830, paragraph 836 B

⁴ FAR 37.203 and 204

- Assist with special projects such as prepare and/or analyze data and develop reports related to the OSHA mission.
- Plan, develop, and execute an efficient and effective contract management program which adheres to the concepts, principles, and practices of the Federal government and the private sector.
- Identify potential problems, strategize corrective actions, and develop implementation progress reports.
- Develop and/or maintain any OSHA-related program or database, as required by various OSHA offices.
- Provide support at the help desk operations, information processing, systems management functions, office operations, and customer service function for the OSHA.
- Provide adequate oversight and supervision of all personnel assigned to perform the required functions.

We concluded the nature of Mr. Kimlin's work was consulting services, and as such, was not within the scope of the BPA. OSHA officials said Mr. Kimlin worked directly for then Assistant Secretary Foulke as a consultant. His hours were billed under the position of Director of Programs, which was not one of the 16 positions listed in the BPA. We reviewed the Director of Programs' responsibilities as listed in the General Services Administration Federal Supply Schedule (FSS) for GMSI and found they were for managing GMSI staff, not providing outside consulting services. OSHA and GMSI officials confirmed that the Director of Programs position was used solely for billing purposes; this position has the highest hourly rate for the GMSI positions listed in the FSS.

OSHA officials said they used the BPA to expedite the then Assistant Secretary's request to procure Mr. Kimlin's services. They stated Mr. Kimlin was not interested in becoming a Federal employee. Consequently, OSHA officials felt the most expeditious way to bring Mr. Kimlin on board was to add him under the BPA with GMSI. Mr. Kimlin was ultimately hired by GMSI's subcontractor, Technical Assistance and Training Corporation (TATC). OSHA officials told us they felt that the arrangement was justifiable because TATC had previously provided OSHA with upper management staff to perform non-administrative work.

OSHA cannot demonstrate there was an adequate justification for procuring Mr. Kimlin's services. The services provided by Mr. Kimlin constituted advisory and assistance services and, as such, were outside the scope of the BPA. OSHA did not comply with Federal laws and regulations and DOL policy which require work for an Advisory and Assistance Services contracts be procured either through a full and open competition or as a sole source award with proper justification and the required departmental review

and approval. Following these requirements could have provided OSHA adequate assurance that Mr. Kimlin's services were justified and reasonable.

Finding 2 - OSHA Could Not Demonstrate It Received Services for \$681,379 Paid to GMSI for Mr. Kimlin

OSHA could not demonstrate it received services for \$681,379 invoiced by GMSI for Mr. Kimlin's consulting services. OSHA provided neither evidence of products or deliverables produced by Mr. Kimlin or an independent record of the hours he charged. This occurred because OSHA did not ensure the task order statement of work contained specific duties and deliverable work products expected from Mr. Kimlin. Also, OSHA did not follow internal policies and procedures designed to ensure that contractor staff time charged to task orders were accounted for and accurately reflected in invoices submitted by GMSI. As a result, OSHA cannot show that \$572,946 in labor hours and \$108,434 in travel expenses invoiced for Mr. Kimlin was appropriate.

Internal control standards for the Federal Government⁵ require agencies to document all transactions and other significant events and have the documentation readily available for examination. The FAR⁶ provides that fees for services rendered are allowable only when supported by evidence of the nature and scope of the service furnished. Evidence necessary to determine that work performed is proper and does not violate law or regulation shall include:

- (1) Details of all agreements (e.g., work requirements, rate of compensation, and nature and amount of other expenses, if any) with the individuals or organization providing the service and details of actual services performed;
- (2) Invoices or billings submitted by consultants, including sufficient detail on the time expended and nature of the actual services provided; and
- (3) Consultants' work products and related documents, such as trip reports indicating persons visited and subjects discussed, minutes of meetings and supporting memoranda and reports.

For the period April 2006 to July 2008, GMSI billed \$681,379 for Mr. Kimlin's services, including \$572,946 for direct labor and \$108,434 for travel. GMSI used monthly time sheets showing the hours Mr. Kimlin worked to prepare invoices for labor charges. Mr. Kimlin prepared travel expense reports with supporting documentation which GMSI used to invoice OSHA for travel.

OSHA officials said they did not have any work products from Mr. Kimlin. They relied on then Assistant Secretary Foulke to monitor Mr. Kimlin's work. Additionally, there was no record of sign-in/sign-out logs to track the hours Mr. Kimlin worked. This occurred

⁵ Standards for Internal Controls in the Federal Government issued by the US General Accountability Office, Appropriate Documentation of Transactions and Internal Control

⁶ FAR 31.205-33(f)

because the GMSI task orders OSHA used for Mr. Kimlin did not contain a statement of work or expected deliverables specifically for him. Instead the statement of work and expected deliverables consisted of generic language that applied to administrative and support services that GMSI typically provided to OSHA. Additionally, OSHA did not follow its internal procedures for verifying hours worked by contractor staff. OSHA required GMSI staff to complete sign-in and sign-out logs to document their hours worked. OSHA used the logs to independently verify the hours charged on the GMSI invoices. However, OSHA officials told us they did not require Mr. Kimlin to complete the logs.

Without any work products and deliverables from Mr. Kimlin and without verification of the hours he worked, OSHA officials cannot demonstrate they received services for the \$681,379 paid to GMSI for Mr. Kimlin's work. Consequently, OSHA cannot show that the amount paid for Mr. Kimlin was appropriate. OIG's Office of Inspections and Special Investigations was investigating this matter at the time of our audit.

Finding 3 - OSHA Authorized Payment for Charges Not Allowed According to the Terms and Conditions of the BPA

OSHA authorized payment for charges specifically unallowable by the terms and conditions of the BPA. OSHA approved GMSI invoices that significantly exceeded the hours awarded in the task orders for Mr. Kimlin and approved unallowable travel expenses that he incurred while commuting between his residence in South Carolina and the OSHA National Office. These improper payments occurred because OSHA officials did not monitor the hours charged by GMSI for Mr. Kimlin and were unaware that the terms of the BPA did not allow costs be billed for travel between a contractor's residence and OSHA's National Office. As a result, OSHA paid GMSI \$248,819 for costs not allowed by the BPA terms and conditions, including \$153,161 for 1,064 in labor hours that exceeded the hours authorized in the task order and \$95,658 for Mr. Kimlin's commuting travel expenses that were not allowed by the BPA terms and conditions.

The BPA⁷ states to enhance flexibility and to allow the BPA holder to determine the optimum labor mix for the order, the BPA holder may, without notice to the Government, increase or decrease the number of hours for each category specified in the individual order by no more than zero (0) percent. The BPA holder will not be paid more than the ceiling price of any individual order.

For travel costs, the BPA⁸ does not allow DOL to reimburse GMSI for the cost of travel between contractor staff's residence and DOL. The BPA states that travel costs subject to reimbursement are limited to travel occurring at the direction of the Government, performed in conjunction with a specific requirement for a trip authorized in the order.

⁷ BPA paragraph A.4.D

⁸ BPA paragraph A.5

Labor Hours Paid Exceeded the Labor Hours Awarded

The number of hours GMSI billed for Mr. Kimlin's services significantly exceeded the hours awarded in the task orders. For the period between April 2006 to July 2008, OSHA awarded three task orders to GMSI that included 2,948 hours totaling \$419,786 for Mr. Kimlin. However, OSHA approved GMSI's invoices that significantly exceeded the hours awarded in the three task orders for Mr. Kimlin. OSHA approved invoices that included 4,012 hours for Mr. Kimlin totaling \$572,946. The following table provides the hours and amount awarded and approved for payment under each task order:

Task Order Number	Awarded		Approved		Difference	
	Hours	Amount	Hours	Amount	Hours	Amount *
DOLU059F22606	300	\$ 39,375	465	\$ 61,031	165	\$ 21,656
DOLU069F24506	600	\$ 82,488	1,687	\$231,929	1,087	\$149,441
DOLU079F25979	2,048	\$297,923	1,860	\$279,986	(188)	(\$17,936)
Total	2,948	\$419,786	4,012	\$572,946	1,064	\$153,161

* Totals rounded to the dollar.

The BPA does not allow the contractor to increase or decrease the number of hours for a labor category awarded in the task orders without DOL's approval. OSHA and OASAM (the servicing procurement agency) officials agreed the task orders should have been modified to increase the hours awarded for Mr. Kimlin's position.

OSHA did not properly monitor the hours charged by GMSI for Mr. Kimlin's services. OSHA considered the hours for each labor category in the task orders to be only estimates. OSHA officials said they were mainly concerned that GMSI's invoices did not exceed the total ceiling amount of the task order. Therefore, OSHA monitored the hours for the whole task order rather than the hours specified for Mr. Kimlin.

OSHA Approved Unallowable Travel Costs

OSHA also did not adhere to the terms of the BPA in approving unallowable travel expenses Mr. Kimlin incurred as a result of commuting between his home in South Carolina and OSHA's National Office in Washington, DC. Commuting expenses included air fares, lodging, per diem, automobile miles driven and other incidental expenses such as public transit, parking, and taxi fares. For the period from April 2006 to July 2008, the commuting expense totaled \$95,658.

The BPA does not allow the contractor to bill for staff commuting costs. OSHA officials were not aware of the BPA's limitation on commuting costs and GMSI interpreted the costs to be allowable because then Assistant Secretary Faulke directed it. However, we concluded the BPA is clear on the limitation of the commuting costs.

OSHA paid GMSI \$248,819 for costs not allowed by the BPA terms and conditions. OSHA paid \$153,161 for 1,064 labor hours billed in excess of the hours authorized in the task order, and \$95,658 for Mr. Kimlin's unallowable commuting travel expenses.

Recommendations

We recommend that the Assistant Secretary for Occupational Safety and Health:

1. Work with OASAM procurement officials to develop an internal policy for obtaining consulting services that complies with applicable Federal regulations and DOL policies.
2. Recover \$681,379 paid to GMSI for Mr. Kimlin's labor and travel costs.
3. Ensure OSHA managers and supervisors do not bypass control procedures already in place for administering contracts.

Agency Response to the Draft Report

In response to the draft Report, the Deputy Assistant Secretary agreed to work with the OASAM procurement office to refine agency policies related to hiring contractors for advisory and assistance services. The Deputy Assistant Secretary further agreed to review existing controls and procedures for administering contracts and taking appropriate action to ensure these control procedures are well understood and properly applied by OSHA managers and supervisors.

The Deputy Assistant Secretary did not fully agree with the recommended recovery of all costs paid to the contractor, GMSI, for Mr. Kimlin's labor and travel costs. He believes the disallowance of all costs associated with Mr. Kimlin is a broad rejection of the costs related to the work that was provided by Mr. Kimlin and is unnecessarily injurious to GMSI. The Deputy Assistant Secretary stated that the Agency defers making a final response to this recommendation until the OIG's Office of Special Investigations completes its current investigation into this matter and provides its findings to OSHA. However, the Deputy Assistant Secretary acknowledged that \$95,658 in commuting travel expenses for Mr. Kimlin was not allowed by terms of the BPA and OSHA will seek recovery of these costs from GMSI.

See Appendix D for the entire response.

OIG Conclusion

Concerning the recovery from GMSI of \$681,379 total costs paid to Mr. Kimlin, the FAR 31.205-33(f) provides that fees for services rendered are allowable only when supported by evidence of the nature and scope of the services furnished. The FAR is supported by internal control standards for Federal Government that require agencies to document all transactions and other significant events and the documentation be readily available for

examination. OSHA was not able to provide products or deliverable produced by Mr. Kimlin or independent records to support the labor hours charged.

Our findings and recommendations remain unchanged.

Elliot P. Lewis

Appendices

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Background

In response to a referral from DOL's Solicitor concerning possible contracting improprieties, OIG conducted a performance audit of BPA #DOLQ059F21654, and related task orders, established between OSHA and GMSI. The possible contracting improprieties involved using the BPA to fulfill a request from then Assistant Secretary for Occupational Safety and Health, Edwin Foulke, Jr., to procure the consulting services of Mr. Randy Kimlin, in violation of the FAR and DOL policies.

OASAM awarded the BPA to GMSI on behalf of OSHA. Under the BPA, GMSI provided OSHA with personnel to perform management support services. The BPA was effective August 1, 2005, with an established base year and 4 option years ending July 31, 2010. The maximum estimated ceiling price for all 5 years was \$20,429,364.80 and the BPA allowed other DOL agencies to issue task orders up to \$5,000,000. The management support services include areas such as data and information systems, administrative, logistic, financial management and customer service operations. OASAM awarded GMSI the BPA against the FSS Information Technology Contract #GS-35F-4638G.

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Appendix B

Objective, Scope, Methodology, and Criteria

Objective

The audit objective was to answer the following question:

Did violations and irregularities occur in OSHA's oversight of the BPA and related task orders?

Scope

The audit focused on OSHA's administration of the GMSI BPA and task orders for Mr. Kimlin's services. We audited the total costs of \$681,379 that GMSI billed OSHA for Mr. Kimlin's services during the period April 2006 through July 2008.

We conducted this audit in accordance with Generally Accepted Government Auditing Standards for performance audits. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on the audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on the audit objectives.

A performance audit includes an understanding of internal controls considered significant to the audit objectives and testing compliance with significant laws, regulations, and other 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 OSHA policies and procedures for administering the BPA task orders. We confirmed our understanding of these controls and procedures through interviews and documentation review. Our assessment of internal controls included the procedures used to review and approve contractor invoices.

Methodology

To accomplish the audit objective, we gained an understanding of the process and requirements for awarding the BPA and task orders to GMSI by interviewing OASAM procurement officials and OSHA officials involved in administering the BPA and task orders. We also reviewed applicable Federal laws, FAR, and DOL requirements in the Department of Labor Manual Series 2 (DLMS). We reviewed the BPA and task orders to gain an understanding of the services to be provided and to identify requirements for the types of costs and labor categories allowed. We obtained and reviewed the 28 invoices that contained Mr. Kimlin's labor and travel costs to determine if they were supported and allowable. We interviewed appropriate officials from OSHA and GMSI to obtain an understanding of the process used to procure Mr. Kimlin's services. We reviewed a

judgmental sample of documentation used by OSHA as part of their procedures to account for hours charged under the task order.

In performing the audit, we evaluated internal controls used by OSHA for reasonable assurance that the task orders for Mr. Kimlin's services were administered in accordance with Federal and DOL requirements. Our consideration of OSHA's internal controls for administering the task orders for Mr. Kimlin's work 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 did not use computer-generated data in performing the audit. We assessed the reliability of information gathered by OSHA and determined that it was sufficient and appropriate to provide a reasonable basis for our findings and conclusions within the context of our audit objectives.

Criteria

We used the following criteria to accomplish the audit objectives:

FAR Subpart 8.4 - contracts awarded using FSS and limited source justifications

FAR Part 37 - service contracting

41 USC Section 253h - task and delivery order contracts.

41 USC Section 253i - task order contracts for advisory and assistance services.

DLMS 2 Chapter 830 - BPAs

Department of Labor Acquisitions Regulations Subpart 2908.4 - FSS

The GMSI BPA #DOLQ059F21654

Standards for Internal Control in the Federal Government

Appendix C

Acronyms and Abbreviations

BPA	Blanket Purchase Agreement
CAO	Chief Acquisition Officer
DLMS	Department of Labor Manual Series
DOL	U.S. Department of Labor
FAR	Federal Acquisition Regulation
FSS	Federal Supply Schedule
GMSI	Global Management Systems, Incorporated
GAO	Government Accountability Office
OASAM	Office of Assistant Secretary for Administration and Management
OIG	Office of Inspector General
OSHA	Occupational Safety and Health Administration
TATC	Technical Assistance and Training Corporation

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Appendix D

OSHA Response to Draft Report

U.S. Department of Labor


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

Reply to the attention of:



MAR 30 2009

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

FROM: DONALD G. SHALHOUB 
Deputy Assistant Secretary

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

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

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

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

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

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

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

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

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

Notwithstanding the Agency's rejection of the totality of Recommendation 2 disallowing all costs associated with the BPA, OSHA does acknowledge that \$95,658

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

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

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

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

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