

U.S. Department of Labor

Office of Inspector General—Office of Audit

**EMPLOYMENT AND TRAINING
ADMINISTRATION**



ETR DID NOT ENSURE BEST VALUE IN AWARDING SUB-CONTRACTS AT THE TURNER JOB CORPS CENTER

Date Issued: September 30, 2011
Report Number: 26-11-003-03-370

**U.S. Department of Labor
Office of Inspector General
Office of Audit**

BRIEFLY...

Highlights of Report Number **26-11-003-03-370**, issued to the Assistant Secretary, Employment and Training Administration (ETA).

WHY READ THE REPORT

Education and Training Resources (ETR) operates the Turner Job Corps Center (ETR Turner). This report discusses how ETR Turner did not ensure best value was received by the government when awarding sub-contracts and purchase orders. We questioned costs, totaling \$1,029,415, due to non-compliance with applicable sections of the Federal Acquisition Regulations (FAR). The report also discusses process improvements ETR Turner, ETA, and Job Corps need to make to ensure ETR Turner's future sub-contracts and purchase order awards comply with applicable sections of the FAR.

ETR's current contract with Job Corps to operate the center covered the 5-year period from July 1, 2005, to June 30, 2010. ETR Turner's contract was extended to cover the 6-month period July 1, 2010, to December 31, 2010. The contract value totaled approximately \$107 million, including \$40 million for two base years, \$21 million for each of three option years, and \$4.6 million for the contract extensions.

WHY OIG CONDUCTED THE AUDIT

Our audit objective was to answer the following question:

Did ETR Turner award sub-contracts and claim costs in accordance with the FAR?

Our audit work was conducted at the ETR Turner Job Corps Center located in Albany, Ga., and at the Atlanta Regional Office of Job Corps in Atlanta, Ga.

READ THE FULL REPORT

To view the report, including the scope, methodology, and full ETA and ETR responses, go to:

<http://www.oig.dol.gov/public/reports/oa/2011/26-11-003-03-370.pdf>.

September 2011

ETR DID NOT ENSURE BEST VALUE IN AWARDING SUB-CONTRACTS AT THE TURNER JOB CORPS CENTER

WHAT OIG FOUND

ETR Turner improperly awarded all 3 of the sub-contracts managed during our review period. For the three sub-contracts, we questioned \$467,640 because cost or price analysis and responsibility checks of the sub-contractors' ability to satisfactorily perform the sub-contracts were not performed. The three sub-contracts were for physician services for students. As such, it was critical for the center to ensure its students received adequate care by evaluating the bids based on the quality of services to be provided as well as cost. We also questioned \$10,803 for two sub-contracts awarded by ETR corporate because the sub-contracts had not been competitively bid and advertised.

Issues were found in the award of purchase orders to vendors for 44 of the 71 expenditures more than \$3,000 we statistically selected. For 26 of these expenditures, which were covered by blanket purchase agreements (BPA) awarded by Turner, required responsibility checks were not used to award the BPAs; for 10 expenditures, the center could not justify why the invoices were split below the micro purchase threshold of \$3,000; for 4 expenditures, the center did not adequately justify sole-source procurement; and for 4 expenditures, the center circumvented competitive bidding by using improper bids. The 44 expenditures totaled \$550,972.

These conditions occurred because ETR Turner had not established a control environment, including procedures and oversight, to ensure compliance with applicable sections of the FAR. In addition, neither ETA contracting personnel nor Job Corps regional staff adequately monitored ETR Turner procurement activities.

WHAT OIG RECOMMENDED

We recommended the Assistant Secretary for Employment and Training recover questioned costs as appropriate, and direct ETR and the center to establish procedures, training, and oversight to ensure compliance with the FAR. We also recommended that ETA contract personnel and Job Corps regional staff review all future ETR Turner sub-contracts for FAR compliance and approval prior to award, and review ETR corporate contracts to determine if they are in compliance with FAR.

ETA generally agreed with our findings and accepted in full or in part all of our recommendations. ETR disagreed with our findings and stated that the FAR pertains to contract award decisions by government contracting officers, and not to sub-contract award decisions by ETR.

PAGE INTENTIONALLY LEFT BLANK

Table of Contents

Assistant Inspector General’s Report	1
Results In Brief	2
Objective — Did ETR Turner award sub-contracts and claim costs in accordance with FAR?	4
<i>Turner JCC improperly awarded sub-contracts resulting in more than \$1 million in questioned costs</i>	4
Finding — Turner JCC did not comply with applicable sections of the FAR when awarding sub-contracts and purchase orders.	4
Recommendations	12
Exhibit	
Exhibit Sub-Contracts and BPAs	15
Appendices	
Appendix A Background	21
Appendix B Objective, Scope, Methodology, and Criteria	23
Appendix C Acronyms	27
Appendix D ETA Response to Draft Report	29
Appendix E ETR Response to Draft Report	33

PAGE INTENTIONALLY LEFT BLANK

U.S. Department of Labor

Office of Inspector General
Washington, D.C. 20210



September 30, 2011

Assistant Inspector General's Report

Ms. Jane Oates
Assistant Secretary
for Employment and Training
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Job Corps is a residential training program for disadvantaged youth where employability skills are developed. Its training activities and living facilities are housed within 125 centers throughout the country. The Job Corps program is administered by the Department of Labor's Employment and Training Administration (ETA) per authorization provided by the Workforce Investment Act (WIA). Within ETA, the program is managed by the Office of Job Corps, which consists of a national office and 6 regional offices. The Job Corps program's budget for FY 2010 totaled about \$1.7 billion.

Education and Training Resources (ETR) operates the Turner Job Corps Center (ETR Turner). ETR's contract with Job Corps to operate the center covered the 5-year period from July 1, 2005, to June 30, 2010. ETR Turner's contract was extended to cover the 6-month period July 1, 2010, to December 31, 2010. The contract value totaled approximately \$107 million, including \$40 million for two base years, \$21 million for each of three option years, and \$4.6 million for the contract extensions.

Center operators are required to adhere to applicable sections of the Federal Acquisition Regulations (FAR) when procuring goods and services and claiming costs to ensure best value is received by the Federal government.¹ In addition, center operators are required to comply with Job Corps' Policy and Requirements Handbook (PRH), contract provisions specifying compliance with the FAR, and their own standard operating procedures (SOP).

Our audit objective was to answer the following question:

Did ETR Turner award sub-contracts and claim costs in accordance with the FAR?

To address our audit objective, we reviewed criteria that were applicable to ETR Turner's procurement activities as of August 2011. This included Job Corps' Policy and Requirements Handbook (PRH), FAR, contract provisions, and ETR Turner's standard operating procedures (SOP). We also analyzed ETR and Job Corps Regional Office

¹ The OIG and ETA agreed that the FAR cited in this report are applicable to contracted center operators. The OIG is conducting additional work to determine if other parts of the FAR are applicable and will report on these issues separately.

assessments of ETR Turner operations and performed process walkthroughs with key ETR corporate and ETR Turner officials, as well as ETA and Job Corps regional office staff. We tested each of the sub-contracts and expenditures for compliance with the sections of the FAR applicable to ETR Turner's contract (Part 52, Solicitation Provisions and Contract Clauses and Part 44, Subcontracting Policies and Procedures), including awarding sub-contracts based on fair and open competition, cost or price analysis, and responsibility checks of the sub-contractors ability to satisfactorily perform the contract.

The audit covered sub-contracts managed and expenditures incurred by ETR Turner from January 1, 2010, to December 31, 2010. We examined all three sub-contracts, totaling \$467,640, managed by ETR Turner during this period. In addition, we reviewed the 2 sub-contracts, totaling \$900,000, awarded by the ETR corporate office that covered the four centers operated by ETR, including ETR Turner. In addition, we reviewed a statistical sample of 71 expenditures more than \$3,000, totaling \$759,189, from a universe of 368 expenditures totaling \$2.9 million. These expenditures were generally initiated by purchase orders and were separate items from the three center sub-contracts and two corporate sub-contracts we reviewed.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Our objective, scope, methodology, and criteria are detailed in Appendix B.

RESULTS IN BRIEF

ETR Turner did not ensure best value was received by the government when awarding sub-contracts and purchase orders. Therefore, we questioned costs totaling \$1,029,415 due to non-compliance with the FAR. However, based on our statistical sampling, improperly awarded sub-contracts and purchase orders may be as high as \$3,078,433.²

ETR Turner improperly awarded all 3 of the sub-contracts managed during our review period. For the three sub-contracts, we questioned \$467,640 because the center had not established fair and open competition. Specifically, cost or price analysis and responsibility checks of past performance were not performed. The three sub-contracts were for physician, mental health, and drug training services for students. As such, it was critical for the center to ensure its students received adequate care and training by evaluating the bids based on the quality of services to be provided as well as cost. Possible responsibility checks included technical skills, experience, and performance in the following areas: providing services to a diverse student population, ages 16-24; conducting mental health assessments, supervising treatment plans, and providing therapy; and providing assessment tools and effective intervention methods used in dealing with students at risk of using drugs. For the two corporate sub-contracts

² A final determination will be made by ETA as to the amount of excess funds paid by contractor to be recovered while recognizing the value of goods and services received.

awarded by ETR, we questioned \$10,803 because the contracts had not been competitively bid and advertised.

Issues were found in the award of purchase orders to vendors for 44 of the 71 expenditures over \$3,000 we statistically selected. For 26 of these expenditures, which were covered by blanket purchase agreements (BPA) awarded by Turner, required responsibility checks were not used to award the BPAs; for 10 expenditures, the center could not justify why the invoices were split below the micro purchase threshold of \$3,000; for 4 expenditures, the center did not adequately justify sole source procurement; and for 4 expenditures, the center circumvented competitive bidding by using improper bids. The 44 expenditures totaled \$550,972. We are 95 percent confident that there were between 186 and 261 expenditures where vendor selection did not comply with the FAR, resulting in between \$2.0 and \$2.6 million in improperly awarded purchase orders. Together with the 3 improperly awarded sub-contracts, the total costs for improperly awarded purchase orders and sub-contracts may be as high as \$3,078,433 (\$478,433 plus \$2.6 million).

These conditions occurred because ETR Turner had not established a control environment, including procedures and oversight, to ensure compliance with applicable sections of the FAR. In addition, neither ETA contracting personnel nor Job Corps regional staff adequately monitored ETR Turner procurement activities for compliance with applicable sections of the FAR.

We recommend the Assistant Secretary for Employment and Training recover questioned costs as appropriate; direct ETR and ETR Turner to establish procedures, training, and oversight to ensure compliance with applicable sections of the FAR; direct ETA contract personnel and Job Corps regional staff to review all future ETR Turner sub-contracts for FAR compliance and approval prior to award; and review ETR corporate contracts to determine if they are in compliance with applicable sections of the FAR.

In response to the draft report, the Assistant Secretary for ETA agreed in full or in part with our findings and accepted our recommendations. ETA will review ETR SOPs to ensure they minimally meet the requirements of FAR Subpart 44.303 and FAR Subpart 52.244-5, ensure ETR provides appropriate procurement training, and provide additional tools to ETA regional contracting officials to ensure a thorough review of potential sub-contract agreements. In addition, ETA will provide ETR the opportunity to provide additional information and will make a final determination as to the amount of excess funds paid by the contractor to be recovered while recognizing the value of goods and services received.

ETR disagreed with our findings and conclusions. ETR stated that each of the FAR we cited pertained to contract award decisions by government contracting officers at the prime contract level, and not to sub-contract award decisions by ETR. ETR said the FAR requirements did not contractually flow-down to ETR and were not relevant to ETR's management and operation of ETR Turner.

See Appendix D for ETA's response in its entirety. See Appendix E for ETR's response in its entirety.

RESULTS AND FINDING

Objective — Did ETR Turner award sub-contracts and claim costs in accordance with FAR?

Turner JCC improperly awarded sub-contracts resulting in more than \$1 million in questioned costs.

Finding — Turner JCC did not comply with applicable sections of the FAR when awarding sub-contracts and purchase orders.

Based on our testing, ETR Turner maintained documentation to support claimed costs had been incurred. However, the center improperly awarded all 3 of the sub-contracts it managed during our review period. We questioned \$467,640 because the center had not established fair and open competition. Specifically, cost or price analysis and responsibility checks of the sub-contractors' ability to satisfactorily perform the contracts were not performed. For the two corporate sub-contracts, we questioned \$10,803 because the sub-contracts had not been competitively bid. ETR Turner also did not comply with applicable sections of the FAR when awarding purchase orders to vendors for 44 of the 71 expenditures over \$3,000 we statistically selected. We questioned the \$550,972 in costs for the 44 expenditures. In total we questioned \$1,029,415 in specific claimed costs relating to ETR Turner's non-compliance with applicable sections of the FAR. However, based on our statistical sampling, the total costs for improperly awarded purchase orders and sub-contracts may be as high as \$3,078,433 (\$478,433 plus \$2.6 million).

These conditions occurred because ETR Turner had not established a control environment, including procedures and oversight, to ensure compliance with applicable sections of the FAR. Also, neither ETA contracting personnel nor Job Corps regional staff adequately monitored ETR Turner procurement activities for compliance with applicable sections of the FAR.

Job Corps Centers Are Required To Comply With Applicable Sections of the FAR

The FAR is applicable to Job Corps center operators because it is required by the PRH and their contracts. The ETR contract to operate ETR Turner specifically states in section E-6 Procurement and Property Management:

The center shall establish systems to procure property, services, and supplies in a cost-efficient and environmentally-friendly manner in accordance with government policies. The contractor shall also establish systems to provide procedures for receipt and accountability of government-owned property, material, and supplies, in accordance with PRH 5.6.

The PRH section 5.6 R1 states, “Center operators and OA/CTS contractors shall follow all applicable procurement regulations, to include those contained in the FAR.”

Applicable FAR requirements for centers procuring supplies or services and claiming costs include the following:

FAR Subpart 52.244-5, *Competition in Subcontracting*

- FAR Subpart 52.244-5 as prescribed in FAR Subpart 44.204(c) – The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.

FAR Part 44, *Subcontracting Policies and Procedures*

- FAR Subpart 44.202-2(a) (5) – Obtain adequate price competition or properly justify its absence.
- FAR Subpart 44.202-2(a)(7) and FAR Subpart 9.104-1 – Obtain a sound basis for selecting and determining the responsibility of the particular subcontractor, including past performance, technical requirements, and ability to comply with proposed performance and delivery schedules.
- FAR Subpart 44.202-2(a) (8) – Perform adequate cost or price analysis or price comparisons and obtain certified cost or pricing data and data other than certified cost or pricing data.
- FAR Subpart 44.202-2(a) (11) – Adequately and reasonably translate prime contract technical requirements into subcontract requirements.
- FAR Subpart 44.201-1(b) *Consent requirements* – If the contractor does not have an approved purchasing system, consent to subcontract is required by the contracting officer.

FAR Subpart 52.216-7, *Allowable Cost and Payment*

- Subpart 52.216-7(a) *Invoicing* (sub-paragraph 1) – The Government will make payments to the Contractor in accordance with FAR Subpart 31.2.

FAR Subpart 31.2 *Contracts with Commercial Organization*

- Subpart 31.201-2 *Determining Allowability* (sub-paragraph d) – A contractor is responsible for accounting for costs appropriately and for maintaining records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, and are allocable to the contract. The

contracting officer may disallow all or part of a claimed cost that is inadequately supported.

- Subpart 31.201-3(a) *Determining Reasonableness* – A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. No presumption of reasonableness shall be attached to the incurrence of costs by a contractor.

ETR Turner's Non-Compliance Resulted in More Than \$1 Million in Questioned Costs

We reviewed all three sub-contracts, totaling \$467,640, managed by ETR Turner from January 1, 2010, to December 31, 2010. We also reviewed two corporate sub-contracts with \$10,803 of expenditures claimed by ETR Turner during the audit period. Additionally, we reviewed a statistical sample of 71 expenditures more than \$3,000, totaling \$759,189, from a universe of 368 expenditures totaling \$2.9 million.

ETR Turner did not consistently comply with applicable sections of the FAR resulting in questioned costs totaling more than \$1 million. Table 1 on the following page summarizes the types of non-compliance and the number of instances and questioned costs for each type.

Table 1: Instances of FAR non-compliance resulting in questioned costs		
FAR Non-compliance	Sub-contracts more than \$25,000 / amount of questioned costs	Expenditures more than \$3,000 / amount of questioned costs
Sub-contract award not based on proper responsibility checks FAR 44.202-2 (a) (7) and (11)	3 of 3 (100%) \$467,640	Not applicable
Corporate BPA award not based on proper responsibility checks FAR 44.202-2 (a) (7) and (11)	2 of 2 (100%) \$10,803	Not Applicable
Turner BPA award not based on proper responsibility checks FAR 44.202-2 (a) (7) and (11)	Not Applicable	Sample: 26 of 71 (36%) \$324,342
Improper splitting of invoices FAR 44.202-2 (a) (7) and (11)	Not Applicable	Sample: 10 of 71 (14%) \$55,160
Inadequate sole source justification FAR 44.202-2(a) (7) and (11)	Not Applicable	Sample: 4 of 71 (0.06%) \$61,800
Circumvented Competitive Bidding	Not Applicable	Sample: 4 of 71 (0.06%) \$109,669
Totals \$1,029,415	5 of 5 (100%) \$478,443	Sample: 44 of 71 (62%) \$550,972

Sub-contracts More Than \$25,000 Where FAR Non-compliance Resulted in Questioned Costs

As noted, we questioned \$467,640 in costs for the three sub-contracts managed by ETR Turner and \$10,803 for two BPAs managed by ETR. The following are examples of non-compliance with the FAR for both types of sub-contracts.

- *Sub-contracts managed by ETR Turner* – In 2010, Clarence Calhoun, M.D. was awarded a one-year, \$164,160 sub-contract to perform medical services for Job Corps students. The agreement was extended for 6 months with additional costs of \$82,080. In awarding the initial sub-contract, ETR Turner requested bids on the FedBizOpps website and received three bids. Clarence Calhoun tied for lowest bid with the contracted physician on center at that time. Clarence Calhoun was awarded the sub-contract because ETR Turner had performance issues with the physician that was already on center.

ETR Turner did not comply with the FAR when awarding the sub-contract to

Clarence Calhoun. The center did not perform a cost or price analysis. Additionally, the center did not develop a means of rating the bids or performing responsibility checks on the past performance of the bidders. The sub-contract was for physician services for the center students. As such, it was critical for the center to ensure its students received adequate medical care by evaluating the bids based on the quality of services to be provided as well as cost. Potential responsibility checks for a physician include: experience providing services to a diverse student population, ages 16-24; evidence of performance on similar type contracts; and evidence of a license to practice in the state and of current liability insurance coverage.

Although ETR Turner did not select the physician already on center due to past performance, the center had not developed a means of rating the bids or performing responsibility checks for all bidders. The award, made without proper bid evaluation, could result in equally poor or worse performance. As such, ETR Turner could not ensure the sub-contract award resulted in best value to the government and adequate medical care for its students. We questioned the cost for the initial contract and extension, or \$246,240 (\$164,160 + \$82,080).

The three sub-contracts were for physician, mental health, and drug training services for students. As such, it was critical for the center to ensure its students received adequate care and training by evaluating the bids based on the quality of services to be provided as well as cost.

See Exhibit 1 for details on the other two sub-contracts where we questioned costs due to inadequate solicitation and evaluation.

- *BPA's managed by ETR* – In 2010, ETR employed a procurement consultant, Above the Standards Procurement Group (Above the Standards), to obtain office supplies under a BPA for its four centers, including ETR Turner. The consultant selected large office supply vendors and submitted a Request for Proposal (RFP) to these specific vendors. The RFP requested prices for items listed on a pricing schedule. Above the Standards awarded a one-year \$450,000 BPA to Staples Contract & Commercial, Inc. (Staples) because it was the only vendor to complete the pricing schedule. ETR Turner records indicate other vendors did not provide complete pricing information because they did not understand the pricing schedules or had other technical problems. As of our May 2011 fieldwork at ETR Turner, the center has claimed costs of \$10,803 relating to the BPA awarded to Staples.

ETR did not comply with applicable sections of the FAR when awarding the BPA to Staples. In awarding the BPA, Above the Standards did not perform a cost or price analysis supporting the basis for the award (FAR Subparts 44.202.2 (a)(5) and (a)(8)). There was no analysis performed supporting any review of the cost components. Without a proper cost or price analysis, there was no way of knowing whether the awarded cost was fair and reasonable (FAR Subpart

31.201-3(a)). Additionally, ETR did not develop a means of rating the bids and performing responsibility checks on past performance of the bidders (FAR Subparts 44.202-2 (a) (7) and (11) and Subpart 9.104-1). Vendors, other than those selected by Above the Standards, did not have the opportunity to bid on the BPA. Additionally, Staples was listed on the consultant's website as one of its "premier vendors." The consultant's ongoing relationship with Staples indicated that it was not a fair and open competition.

Based on FAR non-compliance, we questioned the \$10,803 claimed under the BPA as of our May 2011 fieldwork at the center, and any additional costs claimed since that time.

See Exhibit 1 for details on the other BPA that was not awarded in accordance with the FAR.

Expenditures more than \$3,000 that Resulted in Questioned Costs

As noted, ETR Turner did not comply with applicable sections of the FAR when awarding purchase orders to vendors for 44 of the 71 expenditures more than \$3,000 tested. For 26 of these expenditures, which were covered by BPAs awarded by Turner, required responsibility checks such as past performance were not used to award the BPAs; for 10 expenditures, the center could not justify why the invoices were split below the micro purchase threshold of \$3,000; for 4 expenditures, the center did not adequately justify sole source procurement; and for 4 expenditures, the center circumvented competitive bidding by using improper bids. The following are examples of each type of noncompliance:

- *Responsibility checks were not used to award center BPAs* – From our sample of 71 purchase orders, 26 (36 percent) were related to BPAs whose awards by ETR Turner were not in compliance with the FAR 44.202-2 (a) (7) and (11). Specifically, ETR Turner awarded \$300,000 1-year BPAs to each of Glover Food Services, Sysco-Gulf Coast, and ACC Distributors for the purchase of food products. None of the three awards complied with the FAR, which require responsibility checks to evaluate bids on factors such as past performance. Additionally, the BPAs were not advertised and price information was not obtained and evaluated as required by the FAR. Without proper solicitation and evaluation, ETR Turner could not provide assurance that the government received best value for the three BPAs. Furthermore, Glover Food Services also provided classes and seminars to ETR Turner students as part of the center's culinary arts program. Due to this relationship, awarding a BPA to Glover Food Services without proper solicitation and evaluation indicates a less than fair and open competition. Based on the non-compliance with the FAR, we questioned the \$324,342 in costs claimed for the 26 expenditures.
- *Improperly split purchase orders to avoid soliciting bid requests* – ETR Turner policies (SOP #5.6.1) require written bids for all purchases more than \$3,000 and FAR Subparts 44.202-2 (a) (7) and (11) requires fair and open competition. ETR

Turner did not adhere to its policies and the FAR on 10 different occasions when the center split purchases, resulting in purchase orders under the \$3,000 threshold. For example, on January 7, 2010, purchase order numbers 3907 (\$2,565) and 3908 (\$2,160) for safety shoes were awarded to National Rubber Footwear. The safety shoe purchase totaled \$4,725, but since each purchase order was under \$3,000 bids were not solicited. ETR Turner issued a single \$4,725 check for payment. ETR Turner similarly split 9 other purchase orders. As such, we questioned the \$55,160 in costs claimed for the 10 expenditures.

- *Inadequate justification for sole source* – ETR Turner sole sourced 4 of the 71 expenditures in our sample. These four sole-sourced expenditures were not in compliance with FAR requirements (44.202-2(a) (7) and (11)). Specifically, the center made three payments to New Learning School (\$52,475) and one payment to Penn Foster, Inc (\$9,325), for providing academic training and high school diplomas to students. Center records indicated bids were not solicited and the purchase orders were awarded without competition. The records did not include justification for the sole-source procurement as required by the FAR. Base on the non-compliance, we questioned the \$61,800 claimed in costs for the four expenditures.
- *Circumvented competitive bidding by using improper bids* – ETR Turner used improper bids for four expenditures. For two of the four, painting services (four invoices totaling \$34,960) and carpeting (\$9,120), the center used data submitted by the vendors for prior unrelated work to calculate the bid amounts. For a third expenditure for trash cans (\$9,777), the center obtained one bid and compared it to prices listed on the internet by two other vendors. For the fourth expenditure (three invoices totaling \$55,812), the center used a GSA approved vendors list to obtain two bids for dormitory mattresses and then selected a lower bid from a vendor that was not on the GSA list. None of these four methods complied with FAR requirements for fair and open competition and adequate cost or price analysis or price comparisons. As such, we questioned the \$109,669 in costs claimed for the four expenditures.

In total, we questioned \$550,972 in costs for the 44 expenditures. Based on our statistical sample, we are 95 percent confident there were between 186 and 261 expenditures where vendor selection did not comply with applicable sections of the FAR, resulting in between \$2.0 million and \$2.6 million in improperly awarded purchase orders.³ Together with the 3 improperly awarded sub-contracts, the total cost for improperly awarded purchase orders and sub-contracts may be as high as \$3,078,433 (\$478,433 plus \$2.6 million).

³ The midpoint estimate for our statistical sample is 224 expenditures and \$2.3 million.

ETR Turner Obtained Adequate Support Prior to Payments for Purchase Orders between \$3,000 and \$25,000

We examined a statistical sample of 71 purchase orders for amounts between \$3,000 and \$25,000. For all 71 purchase orders examined, ETR Turner obtained the required supporting documents prior to payment.

FAR Non-Compliance Caused By Weak Control Environment

These conditions occurred because ETR believed that the FAR applied only to government contracting officers and was not applicable to ETR Turner. As such, ETR Turner had not established a control environment, including procedures and oversight, to ensure compliance with the applicable sections of the FAR. Moreover, ETR had not established effective controls even though the results of DOL and internal reviews identified procurement deficiencies and lack of management control in CYs 2008, 2009, and 2010.

ETA reviews each center operator's procurement systems every 3 years. If a center operator's procurement system is "approved," ETA contracting officials reduce their oversight of the center operator's procurement activities. ETR's procurement system was reviewed and reported on (including ETA Turner) in July 2008 and June 2009. Procurement deficiencies similar to our findings were reported for each review; including ETR centers not complying with SOPs, not advertising publicly, not obtaining three bids, and not performing cost or price analysis. As a result, Job Corps did not "approve" ETR's procurement system. Also, ETR conducted a Corporate Program Assessment of ETR Turner in April 2010. This internal assessment identified problems with ETR Turner's purchase order processes, including incomplete bid documentation, changes to purchase orders without required approvals, and insufficient advertising. In response to the assessment, the center staff responsible for procurement was provided training on best procurement practices and how to conduct internal procurement audits. However, based on interviews with attending staff and review of the assessment report and training material, we determined that neither the assessment nor training addressed the awarding of sub-contracts and purchase orders in compliance with the FAR.

We found that ETA contracting personnel and Job Corps regional staff can improve its monitoring of ETR Turner procurement activities. The Job Corps regional office did not review the procurement process at ETR Turner during its last center assessment in 2008. ETR Turner did submit its sub-contracts to the ETA contracting officer for approval prior to the center awarding the sub-contracts. However, the contracting officer did not review the sub-contracts to ensure that they were awarded in compliance with applicable FAR requirements or that best value was obtained. Prior to approval of a center-awarded sub-contract, the contracting officer reviews the documents provided and signs off on a sub-contractor review checklist. Per FAR Subpart 44.2, under the terms of cost reimbursable sub-contracts, the contractor must request the Contracting Officer's consent prior to entering into specified sub-contracts. Prior to approving center

sub-contracts, the Contracting Officer is responsible for reviewing the request and supporting data.

RECOMMENDATIONS

We recommend that the Assistant Secretary for Employment and Training require ETR Turner to:

1. Strengthen ETR Turner SOPs pertaining to procurement. Revisions need to include the required documentation and evaluator signatures and the specific steps to ensure sub-contracts and expenditures are advertised, evaluated, awarded, and costs supported as required by the FAR.
2. Repay questioned costs as appropriate. This includes ETA making a final determination as to the amount of excess funds paid by the contractor to be recovered while recognizing the value of goods and services received.
3. Provide training as needed to ensure procurement staff is proficient on FAR requirements.
4. Develop procedures for providing and documenting supervisory oversight of center procurement.

Also, we recommend that the Assistant Secretary require the Regional Job Corps Office and ETA contracting officer to:

5. Strengthen procedures to ensure ETR Turner complies with the FAR when awarding sub-contracts and purchase orders and claiming related cost. This should include reviewing ETR Turner procurement activities for FAR compliance during on-site center assessments.
6. Review all future ETR Turner sub-contracts for FAR compliance prior to approval.

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



Elliot P. Lewis
Assistant Inspector General for Audit

Exhibit

PAGE INTENTIONALLY LEFT BLANK

Sub-Contracts and BPAs**Sub-Contracts Managed by ETR Turner**

Sub-Contractor	Total Costs	Questioned Costs
Clarence Calhoun, M.D.	\$246,240	\$246,240
Renaissance Centre	\$178,200	\$178,200
B.M.A. & Dawkins Behavioral Health	\$43,200	\$43,200
TOTALS		\$467,640

Clarence Calhoun, M.D.

See details on page 6.

Renaissance Centre

In 2009, ETR Turner awarded a one-year, \$118,800, sub-contract to Renaissance Centre to provide mental health assessment and counseling services to Job Corps students. In 2010, the contract was extended for six months with additional costs of \$59,400. In awarding the initial sub-contract, ETR Turner requested bids on the FedBizOpps website and received two bids. Renaissance Centre was awarded the sub-contract because it was the lowest bidder.

We concluded that ETR Turner did not comply with FAR Subpart 44.202-2 when awarding the sub-contract to Renaissance Centre. The center did not perform an adequate cost or price analysis or responsibility checks to evaluate the bids. The sub-contract was for providing mental health assessments and counseling services to Job Corps students. As such, it was critical for the center to ensure its students received adequate care by evaluating the bids based on the quality of services to be provided as well as cost. Potential responsibility checks for mental health assessment and counseling services include: experience providing services to a diverse student population, ages 16-24; evidence of performance on similar type contracts; evidence of a license to practice in the state and of current liability insurance coverage; and ability to conduct comprehensive mental health assessments, develop and supervise treatment plans, and provide individual and group therapy. Without the adequate bid solicitation and evaluation, ETR Turner could not ensure the sub-contract award resulted in fair and open competition, best value to the government, and foremost, adequate mental health care for its students. As such, we questioned the cost for the initial contract and extension, or \$178,200 (\$118,800 + \$59,400).

Brandon S. Dawkins

In 2009, ETR Turner awarded a one-year, \$28,800, to B.M.A. & Dawkins Behavioral Health Services to provide drug assessment and interdiction services to Job Corps students. In 2010, the contract was extended for six months with additional costs of \$14,400. In awarding the initial sub-contract, ETR Turner requested bids on the FedBizOpps website and received two bids. BMA & Dawkins Behavioral Health Services was awarded the sub-contract because it was the lowest bidder.

We concluded that ETR Turner did not comply with FAR Subpart 44.202-2 when awarding the sub-contract to BMA & Dawkins Behavioral Health Services. The center did not perform an adequate cost or price analysis or perform responsibility checks that affected the contract award. The sub-contract was for providing drug assessment and intervention services to Job Corps students. As such, it was critical for the center to ensure its students received adequate assessment and training by evaluating the bids based on the quality of services to be provided as well as cost. Potential responsibility checks for these services include: experience providing services to a diverse student population, ages 16-24; evidence of performance on similar type contracts; and ability to provide assessment tools and effective intervention methods used in dealing with students at risk of using drugs. Without adequate bid evaluation, ETR Turner could not ensure the sub-contract award resulted in fair and open competition, best value to the government, and foremost, adequate drug assessment and interdiction services for its students. As such, we questioned the cost for the initial contract and extension, or \$43,200 (\$28,800 + \$14,400).

BPA's Managed by ETR

Staples

See details on page 7.

A – Z Solutions

In 2010, Above the Standards obtained janitorial supplies under a BPA for ETR's four centers, including ETR Turner. The consultant sent RFPs to selected janitorial supply vendors. The RFP requested prices for items listed on a pricing schedule. ETR Turner records indicate the consultant considered three bids, although only one bid included a completed pricing schedule. Above the Standards awarded a \$450,000 BPA to A - Z Solutions even though it had not completed the pricing schedule. Furthermore, center records also indicated some of the vendors receiving RFPs did not understand the pricing schedules or had other technical problems and the consultant did not respond to the vendors' questions about the bid process. As of our May 2011 fieldwork at ETR Turner, the center had not claimed costs relating to the BPA awarded to A – Z Solutions because another contract had been in effect. This contract was less than \$25,000 and was included in our testing of expenditures over \$3,000.

ETR did not comply with applicable sections of the FAR when awarding the BPA to A – Z Solutions. In awarding the BPA, Above the Standards did not perform a cost or price analysis supporting the basis for the award (FAR Subparts 44.202.2 (a)(5) and (a)(8)). There was no analysis performed supporting any review of the cost components. Without a proper cost or price analysis, there was no way of knowing whether the awarded cost was fair and reasonable (FAR Subpart 31.201-3(a)). Additionally, ETR did not develop a means of rating the bids and performing responsibility checks on past performance of the bidders (FAR Subparts 44.202-2 (a) (7) and (11) and Subpart 9.104-1). Vendors, other than those selected by Above the Standards, did not have the opportunity to bid on the BPA. ETR management said that the BPA was not advertised on the FedBizOpps website because the consultant was not a Federal contractor and could not access the website. Additionally, A – Z Solutions was listed on the consultant’s website as one of its “Vendor Sourcing Partner.” The consultant’s ongoing relationship with Staples indicated that it was not a fair and open competition. Based on the FAR non-compliance, we question any costs claimed under the BPA since our May 2011 fieldwork at the center.

PAGE INTENTIONALLY LEFT BLANK

Appendices

PAGE INTENTIONALLY LEFT BLANK

Background

Job Corps is authorized by Title I-C of WIA of 1998 and is administered by ETA's Office of Job Corps under the leadership of the National Director, who is supported by a field network of six Regional Offices of Job Corps. The Job Corps program's budget for FY 2010 totaled about \$1.7 billion.

The purpose of Job Corps is to assist disadvantaged youth ages 16 through 24 who need and can benefit from a comprehensive program, operated primarily in the residential setting of a Job Corps Center (JCC), to become more responsible, employable, and productive citizens by developing employability skills. Its training activities and living facilities are housed within 125 centers throughout the country.

ETR Turner, is located in Albany, Georgia, and consists of several buildings. One of these buildings houses the center administration and training sites. Other buildings house the student dormitory, cafeteria, recreation, the career preparation program, academic training classes, outreach and admissions, and the career transition department.

ETR was awarded contract number DOL-J04-UA-00007 to operate ETR Turner effective July 1, 2005. The contract is for operations of ETR Turner for the base two year period July 1, 2005 through June 30, 2007, at an estimated cost of \$40 million. In addition, ETR was awarded the 3 option years, for the period July 1, 2007 through June 30, 2010, at a cost of approximately \$21 million per year. The center received two contract extensions, one for five months and one for one month, through December 31, 2010, in the amount of \$2,790,464 and \$1,837,900, respectively. ETR Turner has an authorized On Board Strength of 1,030 students.

PAGE INTENTIONALLY LEFT BLANK

Objective, Scope, Methodology, and Criteria

Objective

Our audit objective was to answer the following question:

Did ETR Turner award sub-contracts and claim costs in accordance with the FAR?

Scope

The audit covered sub-contracts managed and expenditures incurred by ETR Turner from January 1, 2010, to December 31, 2010. We reviewed all three sub-contracts, totaling \$467,640, managed by ETR Turner during this period. In addition, we reviewed two corporate sub-contracts, totaling \$900,000, awarded by ETR that covered the four centers operated by ETR. We also reviewed a statistical sample of 71 expenditures over \$3,000, totaling \$759,189, from 368 expenditures totaling \$2.9 million. These expenditures were generally initiated by purchase orders and were separate items from the five sub-contracts we reviewed. ETR's contract to operate the ETR Turner was not included in our review because it was awarded by ETA. In addition, no ETR Turner sub-contracts were awarded by ETA.

We performed field work at the Turner JCC located in Albany, Ga., where we reviewed files, supporting documents, and performed interviews. In addition, we interviewed the Job Corps Regional Director in Atlanta, Ga., and ETA contracting officers located in Boston, Mass., and Houston, Texas.

We considered the internal control elements of control environment, risk assessment, control activities, information and communication, and monitoring during our planning and substantive audit phases.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on the audit objectives.

Methodology

To accomplish the audit objective, we obtained an understanding of FAR, and Job Corps' and ETR Turner's procurement regulations and policies. We conducted interviews with ETR Turner officials responsible for procurement and invoice payment.

To assess ETR Turner's internal controls over procurement, we interviewed key center staff; reviewed applicable Job Corps requirements, including Job Corps' PRH, FAR,

contract provisions (Part 52, Solicitation Provisions and Contract Clauses and Part 44, Subcontracting Policies and Procedures), and ETR Turner's SOPs; analyzed the most recent Job Corps Regional Office Center Assessment and ETR's most recent corporate center assessment and performed a walkthrough of the procurement process.

We identified and evaluated the internal controls of ETR Turner, ETR, and Job Corps over the monitoring and approval of sub-contracts as of May 2011.

Specifically, we obtained all supporting documents pertaining to the announcing, evaluating, awarding, and payment of invoices of the three sub-contracts and 71 expenditures. We tested files for completeness for the three sub-contracts by conducting a meeting with the ETR Turner contracting officer and reviewing the contract files in her office. We tested for completeness of the check register by verifying check dates that were issued during our audit period, by verifying all checks were in sequential order, and by verifying missing checks were voided by ETR Turner.

We tested approximately 50 percent of the invoices for the three sub-contracts and because we found no errors relative to FAR Subpart 32.905, we performed no further testing. For the two corporate sub-contracts, we tested approximately 50 percent of one contractor's invoices and none for the other contractor because no expenses were incurred.

For sub-contracts issued by ETR Turner, we obtained the contract file and all supporting documentation provided by ETR Turner. We reviewed all three sub-contracts, totaling \$467,640, managed by ETR Turner during January 1, 2010, to December 31, 2010. We tested each of the sub-contracts and expenditures for compliance with the FAR, including awarding sub-contracts based on fair and open competition, cost or price analysis, and evaluation of past performance (FAR Subpart 44.202-2). In addition, we reviewed two corporate sub-contracts, totaling \$900,000, awarded by ETR that covered the four centers operated by ETR. We also reviewed a statistical sample of 71 expenditures over \$3,000, totaling \$759,189, from 368 expenditures totaling \$2.9 million. These expenditures were generally initiated by purchase orders and were separate items from the five sub-contracts we reviewed. ETR's contract to operate ETR Turner was not included in our review because it was awarded by ETA. In addition, no ETR Turner sub-contracts were awarded by ETA.

For purchase orders issued by ETR Turner, we obtained the check register for the audit period. From the check register we removed checks related to payroll, checks under \$3,000, contract invoices for the three sub-contracts, and checks for utilities. This left 368 expenditures, totaling \$2.9 million. We used statistical sampling to select a sample of 71 expenditures, totaling \$759,189.

A performance audit includes an understanding of internal controls considered significant to the audit objective 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 ETR Turner's policies and procedures related to procurement. We confirmed our understanding of these controls and procedures through interviews and documentation review and analysis. We evaluated internal controls used by ETR Turner for reasonable assurance that the awarding of sub-contracts and payment of invoices were done according to Federal and Job Corps requirements. Our consideration of ETR Turner's internal controls for awarding of sub-contracts and payment of invoices 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 not be detected.

To achieve the assignment's objective we relied on the computer-processed data contained in ETR Turner's check register. We assessed the reliability of the data by (1) performing various testing of required data elements, and (2) interviewing ETR Turner financial officials knowledgeable about the data. Based on these tests and assessments, we concluded the data was sufficiently reliable to use in meeting the audit objective.

Criteria

We used the following criteria to perform this audit:

- Federal Acquisition Regulations,
- Job Corps Policy and Requirements Handbook, and
- ETR Turner Standard Operating Procedures.

PAGE INTENTIONALLY LEFT BLANK

Acronyms

BPA	Blanket Purchase Agreement
DOL	U.S. Department of Labor
ETA	Employment and Training Administration
ETR	Education and Training Resources
ETR Turner	Turner Job Corps Center Operated by ETR
FAR	Federal Acquisition Regulations
GSA	General Service Administration
OIG	Office of Inspector General
PO	Purchase Orders
PRH	Policy and Requirements Handbook
SOP	Standard Operating Procedures
WIA	Workforce Investment Act

PAGE INTENTIONALLY LEFT BLANK

ETA Response to Draft Report

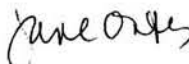
U.S. Department of Labor

Assistant Secretary for
Employment and Training
Washington, D.C. 20210



SEP 29 2011

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

FROM: JANE OATES 
Assistant Secretary

SUBJECT: OIG Draft Report No. 26-11-003-03-370,
*"Education and Training Resources Did Not Ensure Best Value in
Awarding Sub-Contracts at the Turner Job Corps Center"*

This memorandum responds to the subject draft audit report, dated September 9, 2011, Draft OIG Audit Report No. 26-11-003-03-370, *"Education and Training Resources Did Not Ensure Best Value In Awarding Sub-Contracts."* We appreciate the opportunity to provide input to this draft audit report and reiterate that Job Corps center operators are not subject to all aspects of the Federal Acquisition Regulation (FAR), but are accountable to the 13 considerations identified in FAR Part 44.202-2, the subcontracting consent limitations identified in FAR 44.203, and an evaluation of contractor's purchasing system under FAR 44.303.

Our responses to the draft audit report's recommendations follow:

OIG Recommendation 1: Strengthen center SOPs pertaining to procurement. Revisions need to include the required documentation and evaluator signatures and the specific steps to ensure all sub-contracts and expenditures between \$3,000 and \$25,000 are advertised, evaluated, awarded, and costs supported as required by the FAR.

Response: Management accepts this recommendation in part.

Education and Training Resources' (ETR) procurement policies minimally must meet the requirements of FAR Part 44.303 and FAR Part 52.244-5. ETR's Procurement SOPs should be based on sound procurement principles such as ensuring the solicitation is clear, advertised, evaluated in a fair manner, and awarded at a fair and reasonable price. The ETA Office of Contracts Management (OCM) recently completed a Contractor Purchasing System Review of ETR corporate headquarters and visited the Hartford Job Corps Center (JCC). The draft report has been submitted to the cognizant Contracting Officer, which includes recommendations to improve ETR's procurement SOPs. A copy of the final report is available upon request. It is important to note that currently ETR does not have an approved purchasing system.

We consider this recommendation resolved.

OIG Recommendation 2: Repay questioned costs totaling \$1,029,415. This includes ETA making a final determination as to the amount of excess funds paid by the contractor to be recovered while recognizing the value of goods and services received.

Response: Management accepts this recommendation in part.

The OIG computed questioned cost based upon the following findings. Our remarks are included with each finding below:

FAR Non-compliance	Sub-contracts over \$25,000 / amount of questioned costs	Expenditures over \$3,000 / amount of questioned costs
(a) Sub-contract award evaluation factors not developed and employed	3 of 3 (100%) \$467,640	Not applicable
(b) Corporate BPA award evaluation factors not developed and employed	2 of 2 (100%) \$10,803	Not Applicable
(c) Turner BPA award evaluation factors not developed and employed	Not Applicable	Sample: 26 of 71 (36%) \$324,342
(d) Improper splitting of invoices below micro threshold of \$3,000	Not Applicable	Sample: 10 of 71 (14%) \$55,160
(e) Inadequate sole source justification	Not Applicable	Sample: 4 of 71 (0.06%) \$61,800
(f) Circumvented Competitive Bidding	Not Applicable	Sample: 4 of 71 (0.06%) \$109,669
Total.....\$1,029,415	5 of 5 (100%) \$478,443	Sample: 44 of 71 (62%) \$550,972

- (a) OIG needs to clarify specifically what is meant by “award not based on proper evaluation” and the FAR citations annotated. The FAR requires that the contractor have a sound basis for awarding a contract, but not that it publish an RFP inclusive of evaluation factors as required for Federal contracting officials.
- (b) See response a.
- (c) See response a.
- (d) We agree with the OIG, ETR appears to have circumvented competitive bidding requirements as required in Far Part 52.244-5. We will instruct the contractor to provide supportable and verifiable information as to increased cost paid by the contractor as a result of splitting requirements. We will initiate proceedings to reclaim the excess funds paid by the contractor while recognizing the value of the goods and

services received. We anticipate that the cost recovery will be less than the \$55,160 questioned by the OIG.

- (e) We agree with the OIG, ETR did not document the justification for the sole source awards. We will initiate proceedings to reclaim the excess funds paid by the contractor while recognizing the value of the goods and services received. We anticipate that the cost recovery will be less than the \$61,800 questioned by the OIG.
- (f) We agree in part with the OIG, of the 4 actions cited as circumventing competitive bidding, the purchase of mattresses comparing the prices of two GSA schedule bidders to the pricing of a non GSA schedule bidder does not appear to circumvent the competitive bidding process. While ETR may purchase from the GSA schedule they are not bound to the same restrictions as Federal Contracting officials and are not compelled to only compete within the schedule. We will initiate proceedings to reclaim the excess funds claimed by the contractor. We estimate that the cost recovery will be less than the \$109,669 in expenditures over \$3,000.

We consider this recommendation resolved.

OIG Recommendation 3: Provide training as needed to ensure procurement staff is proficient on FAR requirements.

Response: Management accepts this recommendation.

All Job Corps center operators are required by the Job Corps Policy and Requirement Handbook (PRH) to provide a minimum of 5 hours of professional development training, appropriate to the work performed, to all center staff. OCM will ensure ETR provides appropriate procurement training to staff responsible for purchasing center items and awarding center support sub-contracts.

We consider this recommendation resolved.

OIG Recommendation 4: Develop procedures for providing and documenting supervisory oversight of center procurement.

Response: Management accepts this recommendation in part.

OCM will direct ETR to update SOPs to provide for regulatory and statutory oversight, rather than supervisory oversight.

We consider this recommendation resolved.

OIG Recommendation 5: ETA Strengthen procedures to ensure Turner JCC complies with the FAR when awarding sub-contracts and purchase orders and claiming related cost. This should include reviewing Turner JCC procurement activities for FAR compliance during on-site center assessments.

Response: Management accepts this recommendation in part.

OCM will ensure ETR, not Turner JCC, complies with regulatory requirements. OCM conducted a Contractor Purchasing System Review of ETR corporate headquarters and the Hartford Job Corps Center in August 2011. The review identified several areas needing improvement which requires ETR to submit a corrective action plan and undergo a re-inspection prior to the Contracting Officer (CO) approving ETR's purchasing system. As ETR does not have an approved purchasing system, the majority of their sub-contract activity must receive CO approval prior to entering into contractual agreements on behalf of the Job Corps center operated. Further, OCM will work with OJC to provide tools to COTRs/Project Managers to assist in the monitoring of the purchasing practices of ETR.

We consider this recommendation resolved.

OIG Recommendation 6: Review all future Turner JCC sub-contracts for FAR compliance prior to approval.

Response: Management accepts this recommendation

ETR, operator of Turner JCC, does not have an approved purchasing system; as such, the majority of ETR subcontracts must receive CO approval prior to the contract's execution. OCM will provide additional tools to regional COs to ensure a thorough review of potential subcontract agreements ensuring: proper market research, advertisement, competition, basis of award, and cost/price analysis or comparison has been completed prior to granting approval to the contractor.

We consider this recommendation resolved.

Based upon the aforementioned responses, we anticipate the audit report's recommendations will be resolved and can be closed upon completion of the corrective action. If you have questions concerning this document, please contact Linda K. Heartley, ETA's Head of the Contracting Activity, in the Office of Contracts Management at (202) 693-3404.

Cc: T. Michael Kerr, ASAM
Ed Hugler, OASAM
Edna Primrose, Job Corps
Darlene Lucas, ETA Audit Liaison

ETR Response to Draft Report

Education & Training Resources



September 22, 2011

Mr. Elliot P. Lewis
Assistant Inspector General for Audit
U.S. Department of Labor
Office of Inspector General
200 Constitution Avenue, N.W., Suite S-5512
Washington, DC 20210

**RE: ETR Response to Draft Audit Report
Draft Report No. 26-11-003-03-370
Performance Audit of ETR Sub-Contracting at the Turner Job Corps Centers**

Dear Mr. Lewis:

Education & Training Resources (ETR) respectfully replies as follows to the September 9, 2011 Draft Audit Report by the Department of Labor (DOL) Office of Inspector General (OIG) regarding ETR's government contract with the DOL to operate the Turner Job Corps Center:

ETR strongly disagrees with the OIG's draft finding that "ETR Turner did not comply with the FAR [Federal Acquisition Regulation] when awarding subcontracts and purchase orders," for the fundamental reason that the FAR does not contain any of the alleged "requirements" on which the OIG bases its analysis. Ever since this audit began last spring, the OIG has insisted that ETR, as a government contractor awarding subcontracts, is subject to the same procedural requirements that the FAR imposes on the government itself when it awards prime contracts to its own suppliers. In short, this OIG insistence is not consistent with the law.

Repeatedly since last spring, ETR has respectfully challenged the OIG to support the underlying premise of this audit by directly identifying where in the FAR, or in ETR's contract with DOL, any of these alleged "requirements" can be found; and, thus, applied to the ETR/Turner as a test of contractual compliance. In response, the OIG has still not identified a single applicable "requirement." For a long time, in discussions and in draft write-ups shared with ETR, the OIG neither cited nor quoted *any* specific FAR provisions. Subsequently, after repeated urging by ETR and DOL, the OIG provided a "discussion draft" (August 22, 2011) which cited, but declined to quote, at least seven (7) FAR provisions that supposedly applied to the ETR/Turner contract. In response (August 29, 2011), ETR was forced to prepare a detailed analysis that showed, by direct verbatim full-text quotes, that each and every one of the seven supposedly applicable FARs cited by the OIG pertained *on its face* only to contract award decisions by the government contracting officer at the prime contract level, and not to subcontract award decisions by the prime contractor. Nor was a single one of them contractually flowed-down to ETR in ETR's prime contract for the management and operation of the Turner Job Corps Center.

(This response is intended to be read and published in its entirety, including the Appendix.)

ETR Response to Draft Audit Report
September 22, 2011
Page 2 of 18 Pages

I. On Their Face, the OIG's New Citations from FAR Part 44 Are Simply "Considerations" for the Contracting Officer to Review, Not Requirements for the Contractor as Alleged. The OIG Still Has Identified No "Requirements" to Support Its Audit Findings.

In this newly revised Draft Audit Report, the OIG has now responded, completely withdrawing its previous reliance upon the seven (7) inapplicable FARs, and replacing them with citations (but again, no quotation) of two different and previously unmentioned FAR provisions, namely FAR 44.202-2(a)(7) and (a)(11), as the legal basis for its findings of "noncompliance." See Draft Audit Report at p. 5. Therefore, again in this response, ETR bears the burden and expense of having to explain the proper interpretation and application of these newly named and applied FAR citations: that they too do not impose any "requirements" on ETR, the contractor. Nor are they contractually flowed-down to ETR, any more than previously cited FARs were. Accordingly, after consultation with our counsel, we are providing a brief analysis and discussion of these newly-cited FAR sections, their background, and their inapplicability to the audited transactions here in our following response:

FAR Subpart 44.2 pertains to the circumstances in which a government prime contractor must "notify" the government's contracting officer of, and obtain the contracting officer's "consent" for, the prime contractor's award of certain types of subcontracts under certain conditions. This "consent" process, when applicable at all, is very generally defined. Thus, FAR Subpart 44.2 nowhere states comprehensively or specifically what is necessary and sufficient for a subcontract to obtain the government's consent. It contains only a very short list of circumstances in which consent shall not be granted, none of which are present here. FAR 44.203(b). Otherwise it states in general terms that the contracting officer "shall ensure that the proposed subcontract is appropriate for the risks involved and consistent with current policy and sound business judgment." FAR 44.202-1(b). Government consent to subcontracts, when required, is obviously intended to be a flexible, case-by-case process in which the contracting officer's discretion is respected and recognized as essential. The section cited now by the OIG, FAR 44.202-2(a), therefore, begins as follows: "The contracting officer responsible for consent must, at a minimum, review the request and supporting data **and consider the following**:" The FAR goes on to list thirteen (13) questions among those to be "considered," only two of which are cited by the OIG (Draft Audit, p. 5) as the basis of its specific findings, namely: (a)(7) ("Does the contractor have a sound basis for selecting and determining the responsibility of the particular subcontractor?") and (a)(11) ("Has the contractor adequately and reasonably translated prime contract technical requirements into subcontract requirements?").

Nowhere does the FAR say that consent is to be denied, or granted, depending on the answers to any, some, or all of these questions, nor does it even say what the "right" answers (if any) would be in the case of a given procurement ... presumably because which "considerations" are most important, or even relevant at all, or if so, to what extent or weight, will depend on the particular subcontract under review, so there is no one "right" answer, or set of answers that fits all cases. Nevertheless, it is on the basis of these generalities, which the *government contracting officer* is simply to "*consider*," that the OIG now seeks to impose on the *contractor* various specific

(This response is intended to be read and published in its entirety, including the Appendix.)

ETR Response to Draft Audit Report
September 22, 2011
Page 3 of 18 Pages

“requirements” alleged on pages 6 - 8 of the Draft: a supposed requirement to state evaluation “factors and “significant subfactors,” a supposed requirement for a “means of rating [vendor] bids and evaluating the past performance of the bidders,” a supposedly required “justification for sole-source procurement,” and so on. All of these are familiar requirements in certain instances when the government awards a prime contract, or even for a subcontract when these top-level requirements have been flowed-down to lower levels (as they are not here) ... but it is not legally supported to contend that they are imposed on a contractor’s subcontract awards simply on the basis of a few generally-phrased questions concerning what a government contracting officer must “consider” when deciding whether to consent.

The very fact that it has taken until the eleventh hour (this Draft Report, at the end of a six-month-long audit process) for the OIG even to *find* these allegedly-applicable FAR sections, and then to transform their generally-phrased questions for contracting officer “consideration” into specifically-phrased contractor “requirements,” confirms that it cannot be right, or appropriate, to find and demand that the contractor should somehow have known all about the detailed “requirements” allegedly embedded deeply within the generalities of FAR Part 44, and “complied” from Day One of its contract performance ... and then to “question,” and extrapolate further, literally millions of dollars of costs based on alleged “requirements” so inscrutable that the auditors themselves had not discovered them until just a few weeks ago.

II. Even When Properly Understood As Considerations for Contracting Officer “Consent,” the FAR Part 44 Provisions Cited by the OIG Do Not Apply to Most of the Audited Transactions.

A further but basic point about “consent” under FAR 44.2: even if general “considerations” regarding consent to subcontracts could somehow provide the basis for inferring the alleged specific “requirements,” the entire “consent” process does not even apply to most of these audited and questioned transactions in the first place.

In the case of a contractor that does not have an “approved purchasing system” (ETR’s current status), government consent to subcontracts is only required for the following types of subcontracts: cost-reimbursement, time-and-materials, labor-hour, or fixed-price that exceeds the “simplified acquisition threshold” (\$150,000) or 5% of the total estimated cost of the prime contract (approximately \$2 million). See FAR 44.201-1(b); FAR 52.244-2(d).

Most of the subcontracts (particularly the numerous purchase orders) in these audit findings do not fall into any of these categories: they are typically too small in dollar amount and/or neither cost-plus, T&M, nor labor-hour. Hence, FAR 44.202-2 is not applicable to them, even if the “considerations” for “consent” contained the alleged “requirements.”

Even more fundamentally, a “subcontract” must be a “contract” in the first place. See FAR 44.101, definition of “subcontract.” However, many of the audit findings here involve “BPAs” (blanket purchase agreements), which are not contracts themselves: they are just agreements that govern the terms of future potential contracts (*e.g.*, task orders or purchase orders that may be

(This response is intended to be read and published in its entirety, including the Appendix.)

ETR Response to Draft Audit Report
September 22, 2011
Page 4 of 18 Pages

issued in accordance with the BPA). See FAR 16.703((a)(3) (“A basic ordering agreement is not a contract.”); 16.702(a)(2) (“A basic agreement is not a contract.”); *Crewzers Fire Crew Transport, Inc. v. United States*, US Court of Federal Claims No. 10-819C, January 28, 2011 at p. 13 (“ It is well established that BPAs are not contracts.”), citing numerous other cases, including *Modern Sys. Tech. Corp. v. United States*, 24, Cl. Ct.360, 362-63 (1991), *aff’d and adopted*, 979 F.2d 200, 202, 204 (Fed. Cir 1992) (“blanket pricing agreements” “do not create binding rights or obligations because they contain contract clauses that apply to future contracts between the parties”); and *Prod. Packaging*, ASBCA No. 53662, 03-2 BCA 32388 (ASBCA 2003) (“[A] BPA is nothing more than an agreement of terms by which the Government could purchase.”). See also, FAR 2.101 (definition of ‘contract’: “mutually binding legal relationship obligating the seller to furnish the supplies or services ... and the buyer to pay for them.”). Hence, even if the FAR Part 44.2 “consent” “considerations” could be the basis for specific requirements on a contractor, they would not apply to any of the numerous BPAs audited here and questioned in cost, because BPAs are not even “contracts” to begin with.

Only a handful of the subcontracts audited here were subject to FAR Part 44 “consent” ... and the files confirm that all of these professional medical subcontracts (specifically, Clarence Calhoun, Renaissance Center, and Brandon Dawkins) were duly and expressly consented to by the DOL contracting officer, and with multiple sign-offs from additional DOL personnel. There is no indication that the contracting officer did not “consider” all relevant factors in this process.

In the Appendix attached to this letter, ETR responds in more detail regarding the specific transactions identified in the Draft Audit Report. To the extent that purely factual disagreements exist and given our three (3) previous draft responses throughout this audit process, we have refrained from a longer response with additional exhibits, but we respectfully invite the OIG auditors to re-visit our procurement files to confirm our statement of facts in this response. We conclude these general opening remarks with the following observation:

III. Concluding Observations.

The OIG obviously believes that DOL Job Corps contractors are or should be required to award subcontracts in accordance with the same detailed FAR requirements that the government itself must observe when awarding prime contracts. Whether or not that would be a good idea, Job Corps contractors are *not* currently subject to such requirements, neither pursuant to the FAR, nor by contractual flow-downs. Therefore, if the OIG has a continued concern with any party on this matter, it should not be with ETR, the contractor, which has complied with its Turner contract and the FAR as they are actually written.

If anything, we would expect the OIG to recommend to DOL that its contracts contain express provisions for different subcontracting procedures, and that the DOL or the FAR Council adopt various amendments. We question whether adopting such recommendations would serve Job Corps or DOL interest, or the public interest, as they would substantially augment the contractors’ allowable costs of compliance, adding to the operational costs of all 125 Job Corps Centers ... and for no good reason, as there is no evidence in this audit even hinting that the

(This response is intended to be read and published in its entirety, including the Appendix.)

ETR Response to Draft Audit Report
September 22, 2011
Page 5 of 18 Pages

DOL did not receive excellent value, and fair prices, for the subcontracted services furnished by ETR in their management and operation of the Turner Job Corps Center. *I.e.*, no case whatsoever has been made that Job Corps subcontracting is in any sense “broken” such that so expensive a “fix” would be advisable to DOL or Congress. But, it is absolutely certain that it is unfair and inappropriate to find that ETR, *the contractor*, should be punished for what are really OIG’s own disagreement with the FAR and its own client’s policies and practices.

In closing, the OIG auditors have been courteous and respectful in their discussions with ETR and the Turner Center staff, and we, in turn, respect their efforts to perform their mission. In truth, however, we are all the more perplexed and disappointed by their insistence that, essentially, because the writers of the FAR and DOL have not imposed the requirements that the OIG would prefer, then it is the contractor, who complies with the FAR and the contract *as they actually are*, who should be made to pay the price for this disagreement though the audit process, by means of alleged “requirements” that are not applicable, even after all of the different theories and citations have been applied. This Performance Audit of ETR sub-contracting at the Turner Job Corps Center is not fair or reasonable, and is based on a fundamentally flawed audit scope of work. We request that each of the Draft Audit findings adverse to ETR be withdrawn.

Respectfully,



Brian Fox
President/CEO

Attachment(s) – 1
-Appendix

cc: Ray Armada, OIG Audit Director
Michael Elliott, OIG Audit Manager
Linda Heartley, DOL/ETA/OCM Administrator
Edna Primrose, Job Corps National Director
Darlene Lucas, DOL/ETA Audit Liaison
Dennis Johnson, Job Corps Audit Liaison
Carol Andry, DOL/ETA/OCM, Turner Contracting Officer
Chris Herro, Job Corps Regional Director-Atlanta

(This response is intended to be read and published in its entirety, including the Appendix.)

ETR Response to Draft Audit Report
September 22, 2011
Page 6 of 18 Pages

APPENDIX

Subcontracts Above \$25,000 where [Alleged] FAR Noncompliance Resulted in Questioned Costs (Draft Audit Report, pages, 6, 15, and 16).

Subcontracts Managed by ETR/Turner:

Clarence Calhoun, M.D. (Draft Audit Report, p. 6): The OIG alleges that the award of this subcontract for medical services for Job Corps students was not in compliance with FAR, specifically FAR 44.202-2(a)(7) and (11), according to the OIG's chart on page 5 of its Draft. The reasons given for the alleged noncompliance are failure to "perform a cost or price analysis or develop and clearly state in the solicitation the factors and significant subfactors that affected contract award and their relative importance," and also failure to "develop a means of rating the bids and evaluating the past performance of the bidders." OIG's finding is in error because:

- The cited FAR sections on their face do not require the contractor to perform cost analysis or price analysis, state factors or subfactors, or develop a "means of rating." They do not require the contractor to do anything. They simply require the government ***contracting officer*** (not the contractor), in a procurement where government "consent" to a subcontract is required, to "***consider***" various questions framed in general terms, such as whether the contractor has a "sound basis" (undefined) for the subcontract award ((a)(7)) and whether the contractor has "reasonably translated" prime contract technical requirements to the subcontract ((a)(11)). The cited FAR sections do not make "consent" dependent on specific answers to the various questions for "consideration."
- The alleged requirements for the contractor to perform cost analysis and price analysis, list factors and subfactors, and develop a "means of rating" do not exist anywhere else in the FAR, or in ETR's contract with DOL. The OIG has never been able to cite or quote any of these nonexistent FAR "requirements," despite our repeated requests throughout this audit.
- The DOL contracting officer, in fact, reviewed the file for the Calhoun subcontract and formally consented in writing to its award. The consent was also signed off by two other responsible DOL personnel. There is no evidence that any of these personnel did not carefully review and consider all required factors.
- In fact, ETR's selection of Dr. Calhoun was reasonable, properly documented, and provided best value to the Job Corps. ETR advertised the subcontract procurement. It received nine (9) responses, of which three (3) were qualified to perform the required scope of work. Dr. Calhoun was the lowest-priced qualified bid. ETR's estimated budget for this position (shared with the Job Corps during the pricing of the prime contract) was \$101.30/hour. This estimate was documented prior to the subcontract solicitation. The subcontract was awarded to Dr. Calhoun at 95.00/hour, substantially under the ETR/Turner's contracted budget amount, confirming the reasonableness of the price.

(This response is intended to be read and published in its entirety, including the Appendix.)

ETR Response to Draft Audit Report
September 22, 2011
Page 7 of 18 Pages

- The OIG questions the entire amount (\$246,240.00) of the subcontract and its extension based on these alleged procedural irregularities in the award. However, the Draft Audit Report also correctly observes that DOL/ETA's "final determination" of questioned costs must "recognize the value of goods and services received." Draft at page 2, footnote 1. *I.e.*, even if there were a procedural noncompliance, which there is not, it would be improper to reward the government with a windfall of free subcontracted goods and services when there is no finding that Dr. Calhoun failed to perform any of the subcontracted work-scope.

Renaissance Centre (Draft Audit Report, page 15) : The OIG alleges that the award of this subcontract for mental health services for Job Corps students was not in compliance with the FAR, specifically FAR 44.202-2(a)(7) and (11), according to the chart on page 5 of the Draft. The reasons given for the alleged noncompliance are failure to "perform a cost or price analysis or develop and clearly state in the solicitation the factors and significant subfactors that affected contract award and their relative importance," and also failure to "develop a means of rating the bids and evaluating the past performance of the bidders." OIG's finding is also in error because:

- The cited FAR sections on their face do not require the contractor to perform cost analysis or price analysis, state factors or subfactors, or develop a "means of rating." They do not require the contractor to do anything. They simply require the government *contracting officer* (not the contractor), in a procurement where government "consent" to a subcontract is required, to "*consider*" various questions framed in general terms, such as whether the contractor has a "sound basis" (undefined) for the subcontract award ((a)(7)) and whether the contractor has "reasonably translated" prime contract technical requirements to the subcontract ((a)(11)). The cited FAR sections do not make "consent" dependent on specific answers to the various questions for "consideration."
- The alleged requirements for the contractor to perform cost analysis and price analysis, list factors and subfactors, and develop a "means of rating" do not exist anywhere else in the FAR, or in ETR's contract with DOL. The OIG has never been able to cite or quote any of these nonexistent FAR "requirements," despite our repeated requests throughout this audit.
- The DOL contracting officer, in fact, reviewed the file for the Renaissance Center subcontract and formally consented in writing to its award. The consent was also signed off by two other responsible government personnel. There is no evidence that any of these personnel did not carefully review and consider all required factors.
- In fact, ETR's selection of Renaissance Centre was reasonable, properly documented, and provided best value to the Job Corps. ETR advertised the subcontract procurement. It received ten (10) bids, of which two (2) were qualified to perform the required scope of work. Renaissance Centre was the lowest priced qualified bidder. ETR/Turner's estimated budget for this requirement (DOL approved during the pricing of the prime contract) was \$45.69/hour. This estimate was documented prior to the subcontract solicitation. The subcontract was awarded to Renaissance Centre at \$45.00/hour, confirming the reasonableness of the price.

(This response is intended to be read and published in its entirety, including the Appendix.)

ETR Response to Draft Audit Report
September 22, 2011
Page 8 of 18 Pages

- The OIG questions the entire amount (\$178,200.00) of the subcontract and its extension based on these alleged procedural irregularities in the award. However, the Draft Audit Report also correctly observes that DOL/ETA's "final determination" of questioned costs must "recognize the value of goods and services received." Draft at page 2, footnote 1. *I.e.*, even if there were a procedural noncompliance, which there is not, it would be improper to reward the government with a windfall of free subcontracted goods and services when there is no finding that Renaissance Centre failed to perform any of the subcontracted work scope.

Brandon S. Dawkins (Draft Audit Report, page 16): The OIG alleges that the award of this subcontract for assessment and interdiction services was not in compliance with FAR, specifically FAR 44.202-2(a)(7) and (11), according to the OIG's chart on page 5 of its Draft. The reasons given for the alleged noncompliance are failure to "perform a cost or price analysis or develop and clearly state in the solicitation the factors and significant subfactors that affected contract award and their relative importance," and also failure to "develop a means of rating the bids and evaluating the past performance of the bidders." Again, OIG's finding is in error because:

- The cited FAR sections on their face do not require the contractor to perform cost analysis or price analysis, state factors or subfactors, or develop a "means of rating." They do not require the contractor to do anything. They simply require the government *contracting officer* (not the contractor), in a procurement where government "consent" to a subcontract is required, to "*consider*" various questions framed in general terms, such as whether the contractor has a "sound basis" (undefined) for the subcontract award ((a)(7)) and whether the contractor has "reasonably translated" prime contract technical requirements to the subcontract ((a)(11)). The cited FAR sections do not make "consent" dependent on specific answers to the various questions for "consideration."
- The alleged requirements for the contractor to perform cost analysis and price analysis, list factors and subfactors, and develop a "means of rating" do not exist anywhere else in the FAR, or in ETR's contract with DOL. The OIG has never been able to cite or quote any of these nonexistent FAR "requirements," despite our repeated requests throughout this audit.
- The DOL contracting officer, in fact, reviewed the file for the Dawkins subcontract and formally consented in writing to its award. The consent was also signed off by two other responsible government personnel. There is no evidence that any of these personnel did not carefully review and consider all required factors.
- In fact, ETR's selection of Mr. Dawkins was reasonable, properly documented, and provided best value to the Job Corps. ETR advertised the subcontract procurement. It received five (5) responses, of which two (2) were qualified to perform the required scope of work. Mr. Dawkins was the lowest priced qualified bidder. ETR's estimated budget for this requirement (DOL approved during the pricing of the prime contract) was \$30.00/hour. This estimate was documented prior to the subcontract solicitation. The subcontract was awarded

(This response is intended to be read and published in its entirety, including the Appendix.)

ETR Response to Draft Audit Report
September 22, 2011
Page 9 of 18 Pages

to Mr. Dawkins at the budgeted amount of \$30.00/hour, confirming the reasonableness of the price.

- The OIG questions the entire amount (\$43,200) of the subcontract and its extension, based on these alleged procedural irregularities in the award. However, the Draft Audit Report also correctly observes that DOL/ETA's "final determination" of questioned costs must "recognize the value of goods and services received." Draft at page 2, footnote 1. *I.e.*, even if there were a procedural noncompliance, which there is not, it would be improper to reward the government with a windfall of free subcontracted goods and services when there is no finding that Mr. Dawkins failed to perform any of the subcontracted work scope.

BPA's Managed by ETR:

Staples (Draft Audit Report, pages 6-7): The OIG alleges that ETR (through the services of its consultant Above The Standards Procurement Group) was in noncompliance with the FAR (specifically FAR 44.202-2(a)(7) and (11); see chart on page 5 of the Draft Audit Report) when it awarded this Blanket Purchasing Agreement (BPA) for office supplies to Staples. Allegedly, the noncompliances were: failure to "advertise" the procurements, failure to "develop and clearly state in the RFP the factors and significant subfactors" for the procurement, and failure to "develop a means of rating and evaluating the bids." The OIG Draft also says, without evidence, that there is a "suggestion" of a "potential conflict of interest" between the consultant and Staples. The OIG is in error because:

- The cited FAR sections (44.202-2(a) (7) and (11)) on their face do not require the contractor to "advertise," or to "develop and state factors or subfactors," or to develop a "means of rating" bids. They do not require the contractor to do anything. They simply require the government contracting officer (not the contractor), in a case where government "consent" to a subcontract is required (and it is *not* required in the case of a BPA), to "consider" various questions framed in general terms, such as whether the contractor has a "sound basis" (undefined) for the subcontract award ((a)(7)), or whether the contractor has "reasonably translated" prime contract technical requirements to the subcontract ((a)(11)). The cited FAR sections do not make the government's "consent" dependent on specific answers to the various questions listed for "consideration."
- The alleged requirements for the contractor to advertise, to develop and state factors or subfactors, or to develop a "means of rating," do not exist anywhere else in the FAR, or in ETR's contract with DOL. The OIG has never been able to cite or quote any of these nonexistent alleged "requirements," despite our repeated requests throughout this audit.
- Even if "considerations" for "consent" by the contracting officer equaled a "requirement" on the contractor, which they do not, there is no requirement that the government consent to a BPA in the first place, hence FAR Subpart 44.2 is totally inapplicable to this transaction. A BPA is not a contract in the first place, and hence not a subcontract. It is just an agreement specifying provisions that will apply to future potential contracts (purchase orders, and so on)

(This response is intended to be read and published in its entirety, including the Appendix.)

ETR Response to Draft Audit Report
September 22, 2011
Page 10 of 18 Pages

if there are any in the future. See discussion and authorities cited in our cover letter. Hence, even when understood as questions for the contracting officer's "consideration," FAR 44.202-2(a)(7) and (11) are inapplicable here.

- The OIG provides no evidence for its false "suggestion" that the consultant had a "potential conflict of interest" with Staples. The only rationale given by the OIG is that Staples is one of the consultant's "premier vendors." This is not evidence of a "potential conflict of interest," not even a "suggested" potential conflict. On its face, it simply shows that Staples has a successful record of past performance with the consultant, *i.e.*, an obvious factor supporting the selection of Staples for this BPA.
- In fact, the selection of Staples was reasonable, properly documented, and provides best value to the Job Corps. Staples was the low bidder. Contrary to the OIG's finding, "evaluation factors" were in fact expressly listed in the solicitation: "service, past history, pricing, commitment of company and representative, cost, and solutions." The selection process was highly competitive: 14 bidders were solicited and 5 submitted bids. The BPA protects ETR and the Job Corps by reserving ETR the freedom to cease purchasing from Staples if its products or prices cease to be competitive. The reasonableness of the selection of Staples has been confirmed by the auditors having identified zero unallowable or unreasonable office supply costs in this audit.
- The OIG questions all of the costs ultimately charged for office supplies (\$10,803.00 as of the audit date) pursuant to the Staples BPA. But the OIG also correctly recognizes that any disallowance must take into account the value of goods and services received by the Job Corp, so as not to award the government a windfall of free goods and services on account of a procedural noncompliance. See Draft Audit Report at page 2, footnote 1.

A-Z Solutions (Draft Audit Report at page 16-17): As with Staples, the OIG alleges that ETR (through its consultant) was in noncompliance with FAR 44.202-2(a)(7) and (11) when it awarded this Blanket Purchasing Agreement (BPA) for janitorial supplies to A-Z Solutions. The alleged noncompliances were: failure to "advertise" the BPA opportunity, failure to perform an "adequate cost or price analysis," failure to "develop and state" evaluation "factors and significant subfactors" in the RFP, , and failure to "develop a means of rating" the bids. As with Staples, the OIG falsely alleges without any evidence that there is a "suggested ... potential conflict of interest" between ETR's consultant and A-Z Solutions simply because the consultant has identified A-Z as a "premier vendor" and a "Vendor Sourcing Partner." The OIG is also in error because:

- The cited FAR sections (44.202-2(a)(7) and (11)) do not require the contractor to advertise, to perform cost or price analysis, to develop evaluation factors or subfactors, or to develop a "means of rating" bids. They do not require the contractor to do anything. They simply require the government contracting officer (not the contractor), in cases where government "consent" to a subcontract is required (and it is *not* required in the case of a BPA), to "consider" various questions framed in general terms, such as whether the contractor has a

(This response is intended to be read and published in its entirety, including the Appendix.)

ETR Response to Draft Audit Report
September 22, 2011
Page 11 of 18 Pages

“sound basis” (undefined) for a subcontract award ((a)(7)) or whether the contractor has “reasonably translated” prime contract requirements to the subcontract ((a)(11)). The cited FAR sections do not make the government’s “consent” dependent on specific answers to the various questions listed for “consideration.”

- The alleged requirements for the contractor to advertise, to perform cost or price analysis, to develop factors, subfactors, and a “means of rating” for a BPA such as this do not exist anywhere else in the FAR, or in ETR’s contract with DOL. The OIG has never been able to cite or quote any of these nonexistent alleged FAR “requirements,” despite our repeated requests throughout this audit.
- Even if “considerations” for “consent” by the contracting officer equaled a “requirement” on the contractor, which they do not, there is no requirement that the government consent to a BPA in the first place, hence FAR Subpart 44.2 is totally inapplicable to this transaction. A BPA is not a contract in the first place, and hence not a subcontract. It is just an agreement specifying provisions that will apply to future potential subcontracts (purchase orders, and so on) if there are any in the future. See discussion and authorities cited in our cover letter. Hence, even when understood as questions for the contracting officer’s “consideration,” FAR 44.202-2(a)(7) and (11) are inapplicable here.
- The OIG provides no evidence for its false “suggestion” that the consultant had a “potential conflict of interest” with A-Z Solutions. The only rationale given by the OIG is that A-Z Solutions is a “premier vendor” and “Vendor Sourcing Partner” of the consultant. Without more, and we are aware of nothing, this is not evidence of even a “suggested ... potential conflict of interest”; it is simply evidence of A-Z Solutions’ credentials based on successful past performance, *i.e.*, obvious factors in A-Z Solutions’ favor.
- In fact, the selection of A-Z Solutions was reasonable, properly documented, and provides best value to the Job Corps. The selection process was highly competitive: 17 bidders were solicited, and 10 submitted bids. Contrary to the OIG’s contention, “evaluation factors” were expressly listed in the solicitation: “service, past history, pricing, commitment of company and representative, cost, and solutions.” A-Z Solutions was the second-lowest bidder but was judged to provide the best value, all factors considered. A-Z’s pricing was within reasonable range of the low bidder’s pricing, and A-Z is a Service Disabled Veteran Owned Small Business. There is no FAR requirement to select the lowest bidder for this BPA. The terms of the BPA protect ETR and the Job Corps by reserving ETR the freedom to cease ordering from A-Z if its products or prices cease to be competitive. The reasonableness of the selection of A-Z has been confirmed by the fact that the auditors found no unreasonable or unallowable janitorial supply costs billed in this audit.
- The OIG questions all of the costs ultimately charged for janitorial supplies (none as of the audit date). But the OIG also correctly recognizes that any disallowance must take into account the value of goods and services received by the Job Corps, so as not to award the government a windfall of free goods and services on account of a procedural noncompliance. See Draft Audit Report at page 2, footnote 1.

(This response is intended to be read and published in its entirety, including the Appendix.)

ETR Response to Draft Audit Report
September 22, 2011
Page 12 of 18 Pages

Expenditures Over \$3,000 That Resulted In Questioned Costs.

Allegation that evaluation factors were not used to award center BPAs. (Draft Audit Report, pages 7-8): The OIG alleges that the award of three Blanket Purchasing Agreements (BPAs) for food services did not comply with FAR 44.202-2(a)(7) and (a)(11) due to failure to state “factors” for award, failure to “develop” a “means of rating and evaluating bids,” failure to advertise, and failure to obtain and evaluate price information. The three BPAs are for food services from Glover Food Services, Sysco-Gulf Coast, and ACC Distributors. The OIG also alleges that the award of the BPA to Glover “indicates a conflict of interest” solely on the basis that Glover allegedly “provided classes and seminars to ETR Turner students as part of the center’s culinary arts program.” The OIG is wrong because:

- The cited FAR sections (44.202-2(a)(7) and (11)) do not require the contractor to state “factors,” to advertise, or to obtain or evaluate price information. They do not require the contractor to do anything. They simply require the government contracting officer (not the contractor), in a case where government “consent” to a subcontract is required (and it is *not* required in the case of a BPA), to “consider” various questions framed in general terms, such as whether the contractor has a “sound basis” (undefined) for a subcontract award ((a)(7)), or whether the contractor has “reasonably translated” the prime contract technical requirements to the subcontract ((a)(11)). The cited FAR sections do not make the government’s “consent” dependent on any specific answers to the various questions listed for “consideration.”
- The alleged requirements for the contractor to state factors, to advertise, to develop a means of rating, and to obtain and evaluate price information, do not exist anywhere else in the FAR, or in ETR’s contract with DOL. The OIG has never been able to cite or quote any of these nonexistent alleged FAR “requirements,” despite our repeated requests throughout this audit.
- Even if the “considerations” for “consent” equaled a “requirement” on the contractor, which they do not, there is no requirement that the government consent to a BPA in the first place, hence FAR Subpart 44.2 is totally inapplicable here. A BPA is not a contract in the first place, and hence not a subcontract. It is just an agreement specifying provisions that would apply to potential future contracts (purchase orders, and so on) if there are any in the future. See discussion and authorities cited in our cover letter. Hence, even when understood as questions for the contracting officer’s “consideration,” FAR 44.202-2(a)(7) and (11) are inapplicable here.
- The OIG provides no evidence for its false allegation of a “conflict of interest.” “Providing classes and seminars to ETR Turner students as part of the center’s culinary arts program,” whatever the OIG specifically has in mind and whether true or not, on its face has nothing to do with a “conflict of interest.” It is the only rationale offered by the OIG for its allegation.

(This response is intended to be read and published in its entirety, including the Appendix.)

ETR Response to Draft Audit Report

September 22, 2011

Page 13 of 18 Pages

- In any event, the selection of Glover, Sysco-Gulf Coast, and ACC was reasonable, properly documented, and provides best value to the Job Corps. Contrary to the OIG allegation that the opportunity was not advertised, advertising was in fact placed in the local newspaper, the Albany Herald, and five (5) bids were received in response. The auditors were provided with proof of this advertisement. Contrary to the OIG's allegation that price information was not obtained or evaluated, the Center sent the prospective bidders an extensive food inventory spreadsheet listing all expected food purchase items based on past purchasing history, and the bidders electronically responded, filling in the prices for the line items they were offering to supply. Based on this input, Center personnel created a consolidated spreadsheet reflecting the best prices for each listed item. The auditors were provided with this documentation. The consolidated spreadsheet provided the basis for the BPA pricing for all three selected vendors. The OIG has not identified any unreasonable pricing for any food items for any of the BPA vendors.
- As elsewhere, the OIG questions all of the costs billed under these BPAs, thus potentially awarding the government a massive windfall of free food on the basis of alleged procedural shortcomings. The Draft Audit report correctly observes that the actual amount disallowed, if any, must take into account the value of subcontracted goods and services received and enjoyed by the government notwithstanding any procedural issue relating to the award process. Draft Audit Report at page 2, footnote 1.

Alleged improperly split purchase orders. (Draft Audit Report, page 8): The OIG alleges that ETR failed to comply with a requirement for "fair and open competition" under FAR 44.202-2(a)(7) and (11) by using separate purchase orders under \$3,000 when they should have been combined. The Draft confusingly refers to "ten different occasions" and "10 expenditures" when this happened, but in the same paragraph appears to refer to eleven (2 + 9) purchases. Only two of the ten (or perhaps eleven) purchase orders are referred to specifically by individual dollar value in the Draft Report, so full clarity is not possible. The OIG is wrong in any event because:

- Again, FAR 44.202-2(a)(7) and (11) on their face say nothing about the alleged noncompliances: nothing about "splitting" purchase orders, nothing about a \$3,000.00 threshold, and as explained above, nothing at all about any requirements for the contractor, as opposed to general questions for the contracting officer to "consider" in the event that government "consent" to a subcontract is required. Nor are there any such requirements on the ETR anywhere else in the FAR or in ETR's contract with DOL. We have repeatedly asked the OIG to cite and quote them if there are any, and none has been found.
- Even in terms of "considerations" for government consent, there is no requirement for the government to consent to any of these subcontracts in the first place. Government consent to subcontracts in the case of a contractor that does not have an approved purchasing system (ETR's current status) is required only for: cost-reimbursement sub contracts, time-and-materials subcontracts, labor-hour subcontracts, and fixed-price subcontracts whose value is less than the "simplified acquisition threshold" (\$150,000) and 5% of the prime contract value (approximately \$2 million in this case). See FAR 44.201-1(b); FAR 52.244-2(d).

(This response is intended to be read and published in its entirety, including the Appendix.)

ETR Response to Draft Audit Report
September 22, 2011
Page 14 of 18 Pages

Each and every one of the purchases apparently questioned in this audit finding is a fixed-price supply order whose value is well under \$150,000, whether “split” or not “split.” Hence FAR Subpart 44.2 is totally inapplicable.

- During previous phases of this audit, ETR has acknowledged that the purchases apparently referred to in this finding (though we are no longer certain, because the Draft Report does not identify all of them) could have been combined in some cases, but were not, simply due to administrative oversight in the daily press of managing large quantities of purchases for the Center. There is no evidence that the government has paid prices that were higher, or unreasonable, or received less value, or anything less than best value, as a result of such oversights. No reason is provided to question the entire subcontract value of these purchases and give the government a windfall of free procurement as a result of a procedural error, if any. The OIG acknowledges (Draft, page 2, footnote 1), that such a disallowance would not be proper.

Alleged inadequate justification for sole source. (Draft Audit Report, page 8): The OIG alleges that “bids were not solicited and purchase orders were awarded without competition” and “without justification for the sole-source procurement,” in violation of FAR 44.202-2(a)(7) and (11), in the case of two subcontractors for High School Diploma (HSD) services, Penn Foster and New Learning. The OIG is wrong because:

- FAR 44.202-2(a)(7) and (11) impose no such requirements on the contractor. They simply state that the contracting officer (not the contractor), in a case where government consent to a subcontract is required (not the case here), must “consider the general questions of whether there is a “sound basis” (undefined) for the award ((a)(7)) and whether the prime contract requirements have been “reasonably translated” to the subcontract ((a)(11)). Nor are there any such requirements anywhere else in the FAR or in ETR’s contract with DOL. The OIG has never identified any, despite our repeated requests throughout this audit.
- Even as a matter of “considerations” for the contracting officer to ask about in a case where “consent to subcontract” is required, there is no requirement for the contracting officer to consent to these HSD subcontracts in the first place. Consent is only required if the subcontract is cost-reimbursement, time-and-materials, labor-hour, or fixed price under the “simplified acquisition threshold” (\$150,000) or 5% of the prime contract price (approximately \$2 million here). None of these criteria are met here. The Penn Foster and New Learning subcontracts are priced in terms of fixed prices for specific services, all of which are under \$150,000. Hence, FAR Subpart 44.2 is entirely inapplicable here.
- The selection of Penn Foster and New Learning was reasonable and provided best value to the government, as fully explained and documented in earlier stages of this audit. This is not, in fact, a “sole source” procurement in the sense of only one vendor being used. As is evident, ETR selected two HSD vendors, not a sole source. Each provides value to the Job Corps because they offer different HSD programs suitable to different types of credentials that particular Turner JCC students are expected to possess. Hence, the need for two HSD

(This response is intended to be read and published in its entirety, including the Appendix.)

ETR Response to Draft Audit Report
September 22, 2011
Page 15 of 18 Pages

vendors. As previously explained in detail, although there are a few other potential vendors in the HSD field, these are the only two that were suitable for the Turner JCC students' demographic and particular educational needs. Further, the criteria for Job Corps centers selecting these types of HSD providers are contained in Job Corps PRH.

- The OIG has found no evidence and made no finding that the services provided by Penn Foster or New Learning failed to provide the required value to the Job Corps at a reasonable price. Again, therefore, to disallow the entire questioned amount, which is equivalent to the entire subcontract values, would provide the government a windfall of free services on account of an alleged procedural irregularity. That would be improper, as the Draft Audit Report acknowledges (page 2, footnote 1).

Allegation that ETR circumvented competitive bidding by using improper bids. (Draft Audit Report at pages 8-9): The OIG alleges that in the case of purchase orders for painting services (totaling \$34,960) and carpeting (\$9,120), ETR improperly "used data submitted by the vendors for unrelated work to calculate the bid amounts." The OIG also alleges that for a \$9,777 purchase of trash cans, ETR improperly "obtained one bid and compared it to prices listed on the internet by two other vendors." Finally, for purchases of mattresses totaling \$55,812, the OIG alleges that ETR improperly "used a GSA approved vendors list to obtain two bids for dormitory mattresses and then selected a lower bid from a vendor that was not on the GSA list." Without citing any FAR provisions, the OIG concludes that "None of these four methods complied with FAR requirements for fair and open competition and adequate cost or price analysis or price comparisons," and questions all \$109,669 in costs for these "four expenditures." Because the Draft Audit Report provided by the OIG does not identify the specific transactions, our response can only surmise based on previous communications and the dollar amounts mentioned in the draft. Based on this information, the OIG is wrong because:

- The allegation regarding use of "data submitted by the vendors for prior unrelated work" is a new one, not made in previous drafts that the OIG has shared with us. The reference to "\$34,960" appears to pertain to subcontracts with David Painting (check # 130990) and the reference to "\$9,120" apparently pertains to a subcontract with Carpets of Albany (check # 130476). ETR denies pricing these purchases based on data from "unrelated work" and we are not even sure what the allegation means. The OIG presents no evidence for this claim and we are aware of none. The contracts were priced based on bids from the vendors specific to the goods and services procured, not "unrelated work." Our purchasing files, reviewed by the auditors, confirm this.
- With respect to the allegation that ETR "obtained one bid and compared it to prices listed on the internet by two other vendors" for a "\$9,777 purchase of trash cans," this apparently pertains to a subcontract with Barco Products (check # 131226). It is not clear what the nature of the alleged impropriety here is. No FAR or contractual provision is cited (despite our requests to the OIG) that would prohibit a contractor from using internet pricing sources to confirm the reasonableness of a vendor quotes, and there is no such prohibition. On its face, the practice is a reasonable technique for checking price reasonableness. Note that the

(This response is intended to be read and published in its entirety, including the Appendix.)

ETR Response to Draft Audit Report
September 22, 2011
Page 16 of 18 Pages

allegation that multiple vendors' prices were considered itself contradicts the subheader for this allegation that competitive bidding was "circumvented."

- With respect to the allegation concerning procurement of \$55,812 worth of dormitory mattresses (apparently from Lasting Impressions, check # 129573), the OIG again does not explain what is improper or noncompliant. There is no FAR or contractual provision that prohibits a contractor from considering bids from multiple sources including vendors on GSA lists and those not on such lists. The OIG has never provided a FAR or contractual basis for the alleged "requirement," despite our repeated requests. On its face, common sense suggests that a contractor should not be prevented, and the Job Corps would benefit, from consideration of good qualified vendors, from whatever list. Again, the evaluation of multiple quotes, acknowledged in the allegation itself, contradicts the OIG's simultaneous allegation that competition was "circumvented."
- There is no allegation or finding that any of these purchases resulted in quality or value that was unsatisfactory for the Job Corps mission in any way. Yet, the entirety of the subcontracted costs for these transactions is questioned on the basis of the alleged, unexplained, unsubstantiated procedural irregularities. As the Draft Audit recognizes (page 2, footnote 1), any final determination must take into account the actual value of the goods and services enjoyed by the Job Corps, which is undisputed.

Multiplication of Questioned Costs Based on "Statistical Sample."

Despite our requests for clarification in response to a prior draft, the Draft Audit report provides no meaningful explanation or justification for increasing the amount of questioned costs from \$1,029,415.00 based on the transactions discussed above, up to "as high as \$3,078,433." See Draft Audit Report at page 9. The auditors state they have "95 percent" confidence for this inference but do not explain: how their "statistical sample" was selected, why they believe it to be representative of the larger universe, and the basis for the "confidence" level. The auditors correctly require that ETR substantiate its own claimed allowable costs. Consequently, it should be expected, given the damaging and inflammatory potential of this type of multiplication practice, that the OIG's own substantiation for questioning at least \$2 million in allegedly unallowable costs, based on an unspecified, unexplained "sampling" methodology, be much more detailed and justified.

Alleged "Weak Control Environment."

The OIG alleges that "ETR/Turner had not established a control environment, including procedures and oversight, to ensure compliance with FAR." Draft Audit Report at page 9. ETR disputes this allegation.

As a fundamental point in response and with all due respect, the OIG auditors must ensure that they are themselves correctly understanding the "FAR compliance requirements" they are

(This response is intended to be read and published in its entirety, including the Appendix.)

ETR Response to Draft Audit Report
September 22, 2011
Page 17 of 18 Pages

attempting to invoke within this Draft Audit Report. In the case of this audit, the OIG has failed to identify any FAR, or contractual, provisions, which support the alleged “requirements” that supposedly have not been complied with ... despite ETR’s repeated requests and explanations, at considerable expense to this small business. This should not have been necessary. Regrettably, we are driven to the conclusion that this audit scope of work was based on an incorrect premise, and should have been properly and legally vetted within the OIG and DOL Solicitors Office beforehand.

In fact, ETR has a robust control environment of procedure and oversight for FAR compliance, which has been shared with and explained to the auditors through the six (6) month audit period. Our special concern at this time is with the allegations in the Draft Audit Report (page 9) regarding the unapproved status of the company’s purchasing system. The Draft Audit report leaves the false impression that ETR is chronically deficient in this area over a history of several years. This is incorrect and misrepresents the facts involved.

DOL purchasing system reviews were cited as occurring at the Turner Center in CYs 2008 and 2009. These referenced DOL reviews were both incomplete CPSR Reviews that were initiated, but later postponed and cancelled by DOL before any final reports were issued or concluded. ETR provided the following information to the OIG Audit Team, and contends that using these cancelled DOL CPSR Reviews and any basis to support a non-compliance finding is not appropriate.

- ETR’s first DOL CPSR Review was initiated on February 4-8, 2008 at the ETR Corporate Office and on February 26-28, 2008 at the Iroquois Job Corps Center.
- This DOL CPSR Review was performed by then National Office of Job Corps Support Contractor, Exceed Corporation. Following this initial review, ETR’s USDOL/OASAM Contracting Officer issued a normally required corrective action plan as part of the review and approval process. On August 20, 2008, ETR submitted the requested CPSR related corrective action plan to its USDOL/OASAM Contracting Officer. On September 25, 2008, ETR’s corrective action plan was approved by its USDOL/OASAM Contracting Officer.
- On March 12, 2009, ETR was notified that EBSI, LLC had been commissioned on Job Corps’ behalf to conduct the CPSR Re-Assessment, with the explanation that EBSI, LLC was the new National Office of Job Corps Support Contractor for CPSR Reviews; thus, replacing the Exceed Corporation. This EBSI conducted CPSR Re-Assessment took place on April 28-30, 2009 at the Turner Job Corps Center.
- On September 22, 2009, based on the EBSI conducted Re-Assessment, ETR’s USDOL/OASAM Contracting Officer issued a second request for a corrective action plan. Upon reviewing the basis for this additional corrective action plan; particularly since ETR had previously received DOL approval for its earlier plan on September 25, 2008, ETR determined there were conflicting findings between the initial CPSR Review conducted by Exceed and the CPSR Re-Assessment Review conducted by EBSI, LLC. On October 12, 2009, ETR sent official correspondence to its USDOL/OASAM Contracting Officer

(This response is intended to be read and published in its entirety, including the Appendix.)

ETR Response to Draft Audit Report
September 22, 2011
Page 18 of 18 Pages

outlining the conflicts between the initial CPSR Review and DOL approved CAP and the Re-Assessment Review and newly requested CAP. This ETR notification was acknowledged as received by DOL, with no further ETR CPSR related activity for nearly two years, until August 2011.

- On June 10, 2011, ETR was notified by USDOL/ETA/OCM Administrator that a new CPSR Review would be conducted on ETR during the period of August 8-12, 2011 at the ETR Corporate Office and on August 22-26, 2011 at the Hartford Job Corps Academy. ETR was advised by the USDOL/ETA/OCM representative that all prior CPSR Review activities conducted by Exceed Corporation and EBSI, LLC were considered incomplete, null and voided.
- At the time of this response, ETR's only complete CPSR Review is currently on-going and has not been finalized by USDOL/ETA/OCM.

(End of ETR Response)

(This response is intended to be read and published in its entirety, including the Appendix.)

Appendix F

Acknowledgements

Key contributors to this report were Ray Armada (Audit Director), Michael Elliott (Audit Manager), Dr. James Turkvant (Lead Auditor), Nicholas Cumby , Sheila Lay, and Daniel Rhodes (Auditors), and Steve Witherspoon (Reviewer).

PAGE INTENTIONALLY LEFT BLANK

TO REPORT FRAUD, WASTE OR ABUSE, PLEASE CONTACT:

Online: <http://www.oig.dol.gov/hotlineform.htm>
Email: hotline@oig.dol.gov

Telephone: 1-800-347-3756
202-693-6999

Fax: 202-693-7020

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