

U.S. Department of Labor

Office of Inspector General—Office of Audit

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



COMPLAINT INVOLVING THE DEPARTMENT OF LABOR'S COMPETITIVE SOURCING OF FINANCE AND ACCOUNTING POSITIONS

**Date Issued: September 28, 2007
Report Number: 03-07-002-07-711**

BRIEFLY...

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

WHY READ THE REPORT

The Office of Inspector General (OIG) performed an audit in response to a complaint concerning the U.S. Department of Labor's (DOL) competitive sourcing of its finance and accounting positions. The complainant alleged that DOL did not comply with Office of Management and Budget (OMB) Circular A-76 policies and procedures for the preliminary planning process for the finance and accounting competition study, and that although a contractor's report for the preliminary planning of the competitive sourcing was inaccurate, funds were awarded to the same contractor to rectify the inaccuracy.

The Office of the Assistant Secretary for Administration and Management's (OASAM) Office of Competitive Sourcing (OCS) is responsible for overseeing the planning and implementation of DOL's competitive sourcing program. The Assistant Secretary for Administration and Management assigned the Office of the Chief Financial Officer (OCFO) as the lead agency for the finance and accounting services competition because of its responsibilities over DOL's financial accounting employees and systems.

WHY OIG DID THE AUDIT

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

1. Did DOL comply with Federal requirements for the preliminary planning process for the DOL Enterprise-Wide Finance and Accounting services competition study?
2. Did the contractor receive funds to correct deficiencies in its Preliminary Planning Report on the DOL Enterprise-Wide Finance and Accounting services competition study?

READ THE FULL REPORT

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

<http://www.oig.dol.gov/public/reports/oa/2007/03-07-002-07-711>

September 2007

Complaint Involving the Department of Labor's Competitive Sourcing of Finance and Accounting Positions

WHAT OIG FOUND

DOL did not comply with Federal requirements governing the preliminary planning process for the competitive sourcing of DOL's finance and accounting positions because the OCFO, as the lead agency for conducting the competition study, did not use the FAIR Act Inventory as the starting point. As a result, the initial phase included inherently governmental positions that were being considered for competition, which Federal regulations do not allow. This occurred because DOL did not have a policy that specifically stated that the position classifications in the FAIR Act Inventory must be used as the starting point for competition studies. After an affected agency raised concerns, the OCFO and OCS excluded those inherently government positions from further evaluation before the next phase of the preliminary planning process. However, further corrective action is needed to mitigate the risk that inherently governmental positions are included in future competitive sourcing studies.

Concerning the allegation that the contractor received funds to correct deficiencies in its Preliminary Planning Report on the DOL finance and accounting services competition study, we found that Management Analysis, Incorporated (MAI) received funds to perform work subsequent to the preliminary planning phase, but did not use them to correct deficiencies in the Preliminary Planning Report, as alleged. Rather, OCFO and OCS officials performed the work to correct deficiencies in the Preliminary Planning Report.

WHAT OIG RECOMMENDED

We recommend that the Assistant Secretary for Administration and Management establish and implement a policy that requires agencies performing competitive sourcing competition studies to use the position classifications contained in the FAIR Act Inventory as a starting point, unless and until it is changed through approved processes.

In response to the draft report, the Deputy Assistant Secretary for Operations agreed with the recommendation and stated that OASAM has initiated corrective action.

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Executive Summary

The Office of Inspector General (OIG) performed an audit in response to a complaint concerning the U.S. Department of Labor's (DOL) competitive sourcing of its finance and accounting positions. The complainant alleged that DOL did not comply with Office of Management and Budget (OMB) Circular A-76 policies and procedures for the preliminary planning process for the finance and accounting competition study, and that although a contractor's report for the preliminary planning of the competitive sourcing was inaccurate, funds were awarded to the same contractor to rectify the inaccuracy.

Competitive sourcing studies are part of the competition process used to compare the performance of a government organization with that of a private sector or other non-Federal organization to determine which service provider can supply mission-related support at the best price without compromising quality. The Federal Activities Inventory Reform (FAIR) Act of 1998 requires that an executive agency use a competitive process, under the guidance of OMB Circular A-76, to select the source for the performance of commercial activities. Under the FAIR Act, Federal agencies must develop an annual inventory of all commercial activities performed by Federal employees, e.g., those activities that are not inherently governmental. The commercial activities on the inventory provide the universe of activities upon which future decisions related to competitive sourcing may be made. It is the policy of the Federal Government to perform inherently governmental activities with Government personnel and subject commercial activities to the forces of competition. Agencies shall not use contractors to perform inherently governmental activities.

The Office of the Assistant Secretary for Administration and Management's (OASAM) Office of Competitive Sourcing (OCS) is responsible for overseeing the planning and implementation of DOL's competitive sourcing program. OCS provides assistance and guidance to DOL agencies in planning and conducting streamlined and standard competitions. The Assistant Secretary for Administration and Management assigned the Office of the Chief Financial Officer (OCFO) as the lead agency for the finance and accounting services competition because of its responsibilities over DOL's financial accounting employees and systems.

Our audit objectives were to answer the following questions:

1. Did DOL comply with Federal requirements for the preliminary planning process for the DOL Enterprise-Wide Finance and Accounting services competition study?
2. Did the contractor receive funds to correct deficiencies in its Preliminary Planning Report on the DOL Enterprise-Wide Finance and Accounting services competition study?

We conducted our audit in accordance with Government Auditing Standards for performance audits.

Results

DOL did not comply with Federal requirements governing the preliminary planning process for the DOL Enterprise-Wide Finance and Accounting Services competition study. Specifically, the OCFO, as the lead agency for conducting the competition study, did not use the FAIR Act Inventory as the starting point in the initial phase of the preliminary planning process. As a result, the initial phase included inherently governmental positions that were being considered for competition, which Federal regulations do not allow. This occurred because OCS did not have a policy that specifically stated that the position classifications in the FAIR Act Inventory must be used as the starting point for competition studies. After an affected agency raised concerns, the OCFO and OCS excluded those inherently government positions from further evaluation before the next phase of the preliminary planning process. However, further corrective action is needed to mitigate the risk that inherently governmental positions are included in future competitive sourcing studies.

Concerning the allegation that the contractor received funds to correct deficiencies in its Preliminary Planning Report on the DOL finance and accounting services competition study, we found that Management Analysis, Incorporated (MAI) received funds to perform work subsequent to the preliminary planning phase, but did not use them to correct deficiencies in the Preliminary Planning Report, as alleged. Rather, OCFO and OCS officials performed the work to correct deficiencies in the Preliminary Planning Report.

Recommendation

We recommend that the Assistant Secretary for Administration and Management establish and implement a policy that requires agencies performing competitive sourcing competition studies to use the position classifications contained in the FAIR Act Inventory as a starting point, unless and until it is changed through approved processes.

Agency Response

In response to the draft report, the Deputy Assistant Secretary for Operations stated the Department's policy and practice is that inherently governmental functions are not subject to A-76 competitions. The response included a copy of a September 13, 2007, memorandum from the Assistant Secretary for Administration and Management to DOL agency heads clarifying the policy of using the DOL FAIR Act Inventory as the starting point for establishing the universe of full time equivalents to be included in competitive sourcing competitions. The response and follow-up email state the policy is planned to be incorporated in DLMS-3, Chapter 900, Performance of Commercial Activities, by the second quarter of Fiscal Year 2008.

OIG Conclusion

Based on the Deputy Assistant Secretary for Operations' response and our review of the of the memorandum issued to agency heads, the recommendation is resolved and will be closed when OASAM issues the revised DLMS-3, Chapter 900, incorporating the memorandum's policies and procedures.

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U.S. Department of Labor

Office of Inspector General
Washington, DC 20210



Assistant Inspector General's Report

Mr. Patrick Pizzella
Assistant Secretary
for Administration and Management
U.S. Department of Labor
200 Constitution Ave., NW
Washington, DC 20210

The Office of Inspector General (OIG) performed an audit in response to a complaint concerning the U.S. Department of Labor's (DOL) competitive sourcing study of its finance and accounting positions. The complainant alleged that DOL did not comply with OMB Circular A-76 policies and procedures for the preliminary planning process for the finance and accounting competition study, and that although a contractor's report for the preliminary planning of the competitive sourcing was inaccurate, funds were awarded to the same contractor to rectify the inaccuracy.

Our audit objectives were to answer the following questions:

1. Did DOL comply with Federal requirements for the preliminary planning process for the DOL Enterprise-Wide Finance and Accounting services competition study?
2. Did the contractor receive funds to correct deficiencies in its Preliminary Planning Report on the DOL Enterprise-Wide Finance and Accounting services competition study?

We conducted our audit in accordance with Government Auditing Standards for performance audits. See Appendix B.

Objective 1 – Did DOL comply with Federal requirements for the preliminary planning process for the DOL finance and accounting services competition study?

Results – DOL did not comply with Federal requirements for the preliminary planning process for the DOL finance and accounting services competition study.

The OCFO, as the lead agency for conducting the competition study, did not use the FAIR Act Inventory as the starting point in the initial phase of the preliminary planning process. As a result, the initial phase included inherently governmental positions that were being considered for competition, which Federal regulations do not allow. This occurred because OCS did not have a policy that specifically stated that the position classifications in the FAIR Act Inventory be used as the starting point for competition studies. After an affected agency raised concerns, the OCFO and OCS excluded those inherently governmental positions from further evaluation before the next phase of the preliminary planning process. However, further corrective action is needed to mitigate the risk that inherently governmental positions are included in future competitive sourcing studies.

The FAIR Act of 1998 (Public Law 105-270), OMB Circular A-76, and the Federal Acquisition Regulation (FAR) Parts 7.3 and 7.5 provide the requirements for competitive sourcing studies.

- The FAIR Act requires Federal agencies to annually submit to OMB an inventory of activities performed by the agencies for activities that are not inherently governmental. The lists are reviewed by OMB and published in the Federal Register. Interested parties such as employees and labor unions can challenge the lists, and the head of the executive agency has to decide whether the activities need to be reclassified as a result of the challenge.
- OMB Circular A-76, revised May 29, 2003, states that agencies shall perform inherently governmental activities with governmental personnel.
- FAR Parts 7.3 and 7.5 state that it is the policy of the Federal Government to perform inherently governmental activities with Government personnel and subject commercial activities to the forces of competition. Agencies shall not use contractors to perform inherently governmental activities.

Based on the above criteria, we concluded that positions listed in the FAIR Act Inventory as inherently governmental cannot be included in the competitive sourcing study because doing so would violate OMB Circular A-76 and FAR Parts 7.3 and 7.5.

After the FAIR Act Inventory, the next phase of the competitive sourcing process is the preliminary planning phase. The major activities of this phase are to:

- Decide which activities and positions to be competed.
- Conduct preliminary research to determine the business units consistent with market and industry structures.
- Assess the availability of Work Load Data.
- Determine the baseline cost of the activity as performed by the incumbent service provider.

Our review of the preliminary planning tasks found that the OCFO did not use the FAIR Act Inventory as the starting point to ensure that positions classified as inherently governmental were not included in the DOL finance and accounting services competition study.

The OCFO used a contractor, MAI, to assist in performing the preliminary planning phase tasks. OCFO officials told us they developed the task order for MAI to conduct the Business Case Analysis (BCA) and Preliminary Planning Analysis (PPA) phases of the finance and accounting services competition study.

We found that in the BCA phase, MAI performed its own analysis of DOL finance and accounting positions, instead of using the FAIR Act Inventories as a starting point to identify the potential positions to be included in the competitive study. Specifically, in its study, MAI used data from the FY 2004 and 2005 FAIR Act Inventories, data from the DOL PeopleSoft human resource system, results of interviews with key management personnel in each agency, and the justifications the agencies used for positions in their FAIR Act inventory that they classified as commercial but not appropriate for private sector performance. Based on its analysis, MAI recommended in the BCA Report that some positions that the agencies coded as inherently governmental be evaluated during the PPA phase to determine if they could be included in a potential competition study.

In the PPA phase, MAI conducted an activity analysis to further define the finance and accounting activities performed by each of the agencies. MAI analyzed services to determine how they were being performed and which of the services may be required in developing a performance work statement. MAI interviewed agency management to capture key elements of the employees' finance and accounting activities. In the Preliminary Planning Report, issued December 15, 2005, MAI identified a potential study population of 171 positions which consisted of 144 finance and accounting positions and 27 direct support positions. Of the 171 positions MAI recommended be included in the competition study, 22 were classified by agencies in the FAIR Act Inventory as inherently governmental and 12 were classified as commercial but not appropriate for private sector performance.

After MAI issued the Preliminary Planning Report, Mine Safety and Health Administration (MSHA) officials questioned the report because it recommended competing positions that MSHA had classified as inherently governmental in the FAIR

Act Inventory. In a meeting with OCS and OCFO officials, MSHA agreed to reclassify seven positions, which they did in accordance with OMB procedures. Before the agreement to reclassify the positions, the Acting Assistant Secretary for Mine Safety and Health requested the DOL Solicitor for a legal opinion regarding whether inherently governmental positions listed on the FAIR Act Inventory can be included in a competition study. The DOL Deputy Solicitor for National Operations provided a legal opinion which concluded that applicable law does not permit DOL to include inherently governmental positions in a competition study. DOL must base its competitive sourcing decisions on the FAIR Act Inventory classifications unless and until it is changed. OCS and the OCFO performed additional analysis to ensure that positions not appropriate for the competition study were not included in the next phase. This reduced the number of positions from 171 to 108. The following table shows how the number of positions was adjusted to 108:

Number of positions recommended in the Preliminary Planning Report.	171
Removal of Employment and Training Administration positions included in a previous competition.	-15
Removal of positions encumbered by a disabled employee.	-1
Exclusion of a MSHA position that was no longer financial.	-1
Exclusion of FAIR Act Inventory positions classified as commercial but not appropriate for private sector performance.	-12
Exclusion of Fair Act Inventory positions classified as inherently governmental.	-22
Exclusion of OCFO vacant positions.	-19
Inclusion of reclassified MSHA positions from inherently governmental to commercial activity suitable for competition.	7
Total Positions	108

We concluded that MAI's work to evaluate the classification of inherently governmental positions was not necessary because the FAIR Act Inventory should have been used as the starting point. The purpose of the FAIR Act Inventory was for management to identify and classify positions and activities in their agency as inherently governmental or commercial. However, MAI's work evaluated the validity of the FAIR Act Inventory that OMB had already approved. MAI should have used the FAIR Act Inventory as the starting point in its work. By not using the FAIR Act Inventory, there was a risk that positions classified as inherently governmental would be included in the competition study, contrary to the FAIR Act, A-76, and FAR.

We reviewed the effectiveness of the procedures and guidance OCS provided to assist the OCFO in the DOL finance and accounting services competition study. The Department of Labor Manual Series 3, Performance of Commercial Activities, nor OCS has specific policies or procedures to supplement the FAIR Act Inventory and OMB Circular A-76 for the preliminary planning activities. OCS is responsible for assisting agencies in conducting competition preliminary planning activities and serving as a consultant and providing technical assistance to agency personnel on competitive

sourcing issues. OCS provided guidance to the OCFO in various memorandums, periodic meetings, and multiple electronic mail (e-mail) messages. We concluded that OCS provided OCFO sufficient guidance for the finance and accounting study with one exception. We found that the OCS guidance sent to the OCFO on use of the FAIR Act Inventory should have been more definitive. On May 16, 2005, OCS sent OCFO an e-mail message that included three guiding principles for their preliminary planning statement of work. The principle concerning the use of the FAIR Act Inventory stated "The 2005 FAIR Act Inventory can be used as a starting point to discern IG (i.e. inherently governmental) and core commercial activities....but must be followed by a rigorous organizational analysis/work measurement regimen by the consultant." The problem with this principle is that it stated "the 2005 FAIR Act inventory can be used ..." instead of stating that it must be used. The language "the FAIR Act inventory can be used" could lead the reader to believe that the FAIR Act inventory did not have to be used as the starting point to discern inherently governmental and commercial activities.

OCFO's Decision Not to Require Use of the FAIR Act Inventory as a Starting Point

Concerning the issue of not using the FAIR Act Inventory as the starting point, OCFO officials told us they interpreted OCS's e-mail message as guidance rather than a requirement. Statements in the e-mail message implied that no existing determination had been made as to which operations were of a commercial nature and which were inherently governmental, and that the contractor was to assist them in making this determination. OCFO officials reported that the OCS e-mail message used the words "can be used" and not the words "must be used" to describe the FAIR Act Inventory as a starting point. OCFO officials stated that there are numerous e-mail messages from OCS staff validating the work done by the contractor and the study team related to the DOL finance and accounting competitive study. The OCFO officials also stated that these messages never indicated the process was improper or that the FAIR Act Inventory was the sole determinant.

Since the use of the FAIR Act Inventory is critical in the competitive sourcing process, OCS needs to implement a policy that clearly states that it be used in future competition studies. Without such a policy, there is a risk that resources may be unnecessarily spent re-evaluating management's position classification and that inherently governmental positions are improperly included in the competition study.

Recommendation

We recommend that the Assistant Secretary for Administration and Management establish and implement a policy that requires that agencies performing competitive sourcing competition studies use the position classifications in the FAIR Act Inventory as a starting point, unless and until it is changed through approved processes.

Agency Response

In response to the draft report, the Deputy Assistant Secretary for Operations stated the Department's policy and practice is that inherently governmental functions are not subject to A-76 competitions. The response included a copy of a September 13, 2007, memorandum from the Assistant Secretary for Administration and Management to DOL agency heads clarifying the policy of using the DOL FAIR Act Inventory as the starting point for establishing the universe of full time equivalents to be included in competitive sourcing competitions. The response and follow-up email state the policy is planned to be incorporated in DLMS-3, Chapter 900, Performance of Commercial Activities, by the second quarter of Fiscal Year 2008.

OIG Conclusion

Based on the Deputy Assistant Secretary for Operations' response and our review of the memorandum issued to agency heads, the recommendation is resolved and will be closed when OASAM issues the revised DLMS-3, Chapter 900, incorporating the memorandum's policies and procedures.

Objective 2 – Did the contractor receive funds to correct deficiencies in its Preliminary Planning Report on the DOL finance and accounting services competition study?

Results – The contractor did not receive funds to correct deficiencies in its Preliminary Planning Report on the DOL finance and accounting services competition study.

DOL contracted and agreed to pay MAI funds subsequent to the preliminary planning phase. The tasks that MAI performed did not involve correcting deficiencies in the Preliminary Planning Report.

The OCFO recommended, and OASAM selected, MAI from vendors that responded to the blanket purchase agreement issued by OASAM for services for DOL's competitive sourcing efforts. OASAM's contracting officer obligated \$82,422 for Phase I and \$116,618 for Phase II of the preliminary planning process. Subsequently, the contracting officer obligated \$218,484 for the Performance Work Statement (PWS) and Quality Assurance Surveillance Plan (QASP).

We reviewed the work tasks for the PWS and QASP and determined they did not include MAI correcting deficiencies in the Preliminary Planning Report. Rather, OCFO and OCS officials performed the work to correct the deficiencies in the Preliminary Planning Report.



Elliot P. Lewis
March 6, 2007

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Appendices

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BACKGROUND

Competitive sourcing studies are part of the competition process used to compare the performance of a government organization with that of a private sector or other non-Federal organization to determine which service provider can supply mission-related support at the best price without compromising quality. The public-private competition process is highly structured to ensure a level playing field for both private and government bidders. Competitive sourcing is one of the elements of the President's Management Agenda.

The FAIR Act of 1998 requires that an executive agency use a competitive process under the guidance of OMB to select the source for the performance of commercial activities. Under the FAIR Act, Federal agencies must develop an annual inventory of all commercial activities performed by Federal employees, e.g., those activities that are not inherently governmental. The commercial activities on the inventory provide the universe of activities upon which future decisions related to competitive sourcing may be made. The FAIR Act Inventory is the planning document from which activities are selected for public-private competitions. The FAIR Act Inventory should fairly, accurately, and completely represent the activities being performed at an agency in meeting its mission. It is the policy of the Federal Government to perform inherently governmental activities with Government personnel and subject commercial activities to the forces of competition. Agencies shall not use contractors to perform inherently governmental activities. Whether or not a commercial activity is carried out through the private sector, or through the public sector, the A-76 process ensures that it is realistic, fair, and transparent.

OMB reviews each agency's commercial activities inventory and consults with the agency on its content. After OMB's review, the agency must make its inventory available and OMB shall publish a notice of availability in the Federal Register. The FAIR Act permits an interested party to challenge the inclusion or exclusion of an activity from the agency's FAIR Act Inventory. Interested parties are: actual or prospective offerors for any contract for performing the activity; representatives of businesses or professional associations; officers or employees within the agency; or the head of any labor organization whose members include employees in the agency. Challenges must be filed within 30 working days of the publication of the notice of availability.

Prior to the announcement of competitive sourcing competitions, OMB Circular A-76 requires that various steps be completed in the preliminary planning process. The preliminary planning steps include:

- Scope - Determine the activities and full-time equivalent positions to be competed.

- Grouping - Conduct preliminary research to determine the appropriate grouping of activities as business units.
- Workload Data and Systems - Assess the availability of workload data, work units, quantifiable outputs of activities or processes, agency or industry performance standards, and other similar data.
- Baseline Costs - Determine the activities baseline costs as performed by the incumbent service provider.
- Requirements Identification – Identify type of competition, schedule, participant roles and responsibilities, competition officials, incumbent service providers.

In DOL, OASAM's OCS is responsible for overseeing the planning and implementation of the Department's competitive sourcing program. OCS provides assistance and guidance to DOL agencies in planning and conducting streamlined and standard competitions.

In September 2004, DOL announced its draft FY 2005 Competition Plan which included the Department's finance and accounting function. In October 2004, the Assistant Secretary for Administration and Management assigned the OCFO as the lead agency for the finance and accounting services competition because of its responsibilities over DOL's financial accounting employees and systems.

The OCFO used a contractor, MAI, to assist in performing the preliminary planning phase tasks. The OCFO developed the task order for MAI to conduct the Business Case Analysis and Preliminary Planning Analysis phases of the finance and accounting services competition study. MAI issued the Business Case Analysis Report on August 22, 2005, and issued the Preliminary Planning Report on December 15, 2005.

In January 2006, OIG received a complaint alleging DOL did not comply with OMB Circular A-76 policies and procedures for the preliminary planning process for the finance and accounting competition study and a contractor issued a report on its preliminary planning work that was inaccurate, yet received a new contract to rectify the inaccuracy.

The DOL finance and accounting competition was published in the Federal Business Opportunities with a response due date of February 28, 2007. DOL did not receive any commercial bids and, therefore, DOL's most efficient organization prevailed.

APPENDIX B

OBJECTIVES, SCOPE, METHODOLOGY, AND CRITERIA

Objectives

The Office of Inspector General (OIG) performed an audit in response to a complaint concerning the U.S. Department of Labor's (DOL) competitive sourcing of its finance and accounting positions. The complainant alleged that DOL did not comply with Office of Management and Budget (OMB) Circular A-76 policies and procedures for the preliminary planning process for the finance and accounting competition study, and that although a contractor's report for the preliminary planning of the competitive sourcing was inaccurate, funds were awarded to the same contractor to rectify the inaccuracy.

Our audit objectives were to answer the following questions:

1. Did DOL comply with Federal requirements for the preliminary planning process for the DOL Enterprise-Wide Finance and Accounting services competition study?
2. Did the contractor receive funds to correct deficiencies in its Preliminary Planning Report on the DOL Enterprise-Wide Finance and Accounting services competition study?

Scope

Our audit focused on the preliminary planning process for DOL competitive sourcing for the Department's finance and accounting positions. This consisted of activities that occurred between September 2004 and November 2006.

We conducted our audit in accordance with Government Auditing Standards.

We conducted our field work at DOL's National Office in Washington, DC between August 4, 2006 and March 6, 2007.

Methodology

To determine if the OCFO complied with Federal requirements for the preliminary planning process for the DOL finance and accounting services competition study, we obtained an understanding of the work performed and compared it to the requirements in the FAIR Act, OMB Circular A-76, FAR, and the DLMS. To obtain an understanding of the work performed, we reviewed the two reports issued by MAI as part of the preliminary planning process, the Business Case Analysis report issued August 22, 2005, and the Preliminary Planning Report issued December 15, 2005. We also interviewed OCFO and OCS officials. From the OCFO, we interviewed the Chief Financial Officer (CFO), the Deputy to the CFO, the Executive Assistant to the CFO,

and the Contracting Officer's Technical Representative. From OCS, we interviewed the Director, Deputy Director, and the Assistant Secretary for Administration and Management's Special Assistant. We also interviewed the OASAM contracting officer for the MAI contract.

To determine the effectiveness of the guidance OCS provided to the OCFO to assist them in the DOL finance and accounting services competition study, we reviewed OCS policies, procedures, correspondences, and e-mails. We also interviewed other DOL agency officials involved in competitive sourcing about guidance OCS provided them during the process.

To determine if MAI received funds to correct deficiencies in its Preliminary Planning Report on the DOL finance and accounting services competition study, we reviewed the Blanket Purchase Agreement, PWS and QASP Development tasks to be performed after the issuance of the Preliminary Planning Report. We also interviewed OCFO and OCS officials and reviewed their work.

We did not test the overall internal controls of OCS related to competitive sourcing or perform a complete audit of the OCS's competitive sourcing program. We only performed the necessary fieldwork and tested controls related to the preliminary planning process of DOL competitive sourcing necessary to address the allegations. We documented the internal controls that were significant to the audit objectives. We obtained an understanding of the internal control environment by interviewing OCS and OCFO officials on the preliminary planning process for the DOL finance and accounting competition.

Criteria

The audit used the following criteria to evaluate the competitive sourcing study for DOL's finance and accounting positions:

- The Federal Activities Inventory Reform Act of 1998 (Public Law 105-270)
- Office of Management and Budget Circular A-76, May 29, 2003
- The Federal Acquisition Regulation Parts 7.3 and 7.5, March 2005
- Department of Labor Manual Series 3, Chapter 900, Performance of Commercial Activities, August 2004

ACRONYMS AND ABBREVIATIONS

BCA	Business Case Analysis
CFO	Chief Financial Officer
DOL	U.S. Department of Labor
FAIR	Federal Activities Inventory Reform
FAR	Federal Acquisition Regulation
IG	Inherently Governmental
MAI	Management Analysts, Incorporated
MSHA	Mine Safety and Health Administration
OASAM	Office of the Assistant Secretary for Administration and Management
OCFO	Office of the Chief Financial Officer
OCS	Office of Competitive Sourcing
OIG	Office of Inspector General
OMB	Office of Management and Budget
PPA	Preliminary Planning Analysis
PWS	Performance Work Statement
QASP	Quality Assurance Surveillance Plan

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AGENCY RESPONSE TO DRAFT REPORT

U.S. Department of Labor

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



SEP 20 2007

MEMORANDUM FOR ELLIOT LEWIS

Assistant Inspector General for Audit

A handwritten signature in black ink, appearing to read "Edward Hugler", written over the typed name.

FROM:

EDWARD HUGLER
Deputy Assistant Secretary for Operations

SUBJECT:

Audit of a Complaint Involving DOL's Competitive Sourcing of
Finance and Accounting Positions;
Draft Report No. 03-07-002-07-711

This responds to the Office of the Inspector General's audit of a complaint about the process of DOL's A-76 competition involving finance and accounting positions.

By way of background, the competition of DOL finance and accounting positions was initiated in December, 2005. In July, 2006 OIG initiated this audit with the Office of the Assistant Secretary for Administration and Management (OASAM) and Office of the Chief Financial Officer (OCFO)—the lead agency for the competition of finance and accounting positions.

It is my understanding that the complaint originated with a particular DOL agency. The nature of the complaint was that FTE in the FY 2005 DOL FAIR Act inventory were being examined for re-classification in the preliminary planning process for the competition of finance and accounting positions. Notably, seven of this same agency's FTE were subsequently properly re-classified from inherently governmental—and thus not subject to competition—to commercial activities, which are appropriate for inclusion in A-76 competitions. These corrections to the agency's FAIR Act Inventory were completed, in accordance with the formal process of revising the Inventory, and the FTE were subsequently included in competition of finance and accounting positions. In May, 2007 legislative action (PL 110-28) eliminated this agency's positions from A-76 competitions.

In addition to finding that the OCFO did not use the FAIR Act Inventory as the starting point in the initial phase of the preliminary planning process, the OIG concluded that OASAM's Office of Competitive Sourcing (OCS) did not have an explicit policy that position classifications in the FAIR Act Inventory "must" be used as the starting point for competition studies. Instead, OCS guidance specified that the Inventory "can" be used as the starting point.

On the strength of this finding, the OIG recommended that the Assistant Secretary for Administration and Management establish and implement a policy that requires that agencies performing competitive sourcing studies use the position classifications in the FAIR Act Inventory as a starting point, unless it is changed through approved processes—the same process the Department followed to re-classify the agency FTE discussed above.

SEP 26 2007

For clarification, the Department's policy and practice is that inherently governmental functions are not subject to A-76 competitions. With this in mind, OASAM accepts the OIG's recommendation and has issued the attached policy, effective September 13, 2007. This policy will be incorporated in DLMS-3, Chapter 900, Performance of Commercial Activities.

Attachment

cc: Patrick Pizzella, ASAM
Lisa Fiely, CFO