

OASAM and ETA's Combined Response to Draft Report

U.S. Department of Labor

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



SEP 14 2010

MEMORANDUM FOR ELLIOT P. LEWIS
Assistant Inspector General

FROM:

JANE OATES
Assistant Secretary for
Employment and Training

EDWARD C. HUGLER
Deputy Assistant Secretary for Operations,
Senior Procurement Official

SUBJECT: OIG Audit of Applied Technology Systems Inc.
Overcharged Job Corps for Indirect Costs
Draft Report # 26-10-003-01-370

This memorandum responds to the subject draft audit report, dated August 24, 2010, Applied Technology Systems, Inc. (ATSI) Overcharged Job Corps for Indirect Costs. We appreciate the opportunity to provide input to this draft audit report as well as to the recent discussion draft report and last year's "statement of facts." We note for the record that the Department referred this matter to the OIG on October 22, 2009 based on concerns management observed while performing the reviews of ATSI's indirect cost proposals for the periods FY 2004 through FY 2007. These reviews performed by OASAM's Division of Cost Determination (DCD) revealed over \$1.7 million of disallowed costs based on a limited sample of transactions during negotiations.

OASAM's DCD performs over 400 indirect cost rate negotiations as the Federal cognizant agency for grantees and contractors leading into significant disallowed costs. While we are proud of the work performed by DCD, we acknowledge that more can be done to strengthen the monitoring of indirect cost proposal submissions.

Our responses to the draft report's recommendations follow:

OIG Recommendation 1. Recover either from ATSI or the applicable prime contractor (in situations where ATSI was a subcontractor) the more than \$1.8 million we calculated Job Corps was overcharged for ATSI's indirect costs. This includes OASAM renegotiating approved overhead rates with ATSI as may be needed based on the additional \$245,531 in questioned costs we identified.

Response: Management accepts this recommendation.

DCD will evaluate the additional questioned costs of \$245,531 and re-negotiate the applicable indirect rates for the periods FY 2004 through FY 2007 with ATSI as necessary. We foresee these negotiations being completed during the 1st quarter of FY 2011. After these OJC/ETA rates are finalized and negotiation agreements are issued, we will share these outcomes with Job Corps. Job Corps will be able to recalculate allocable indirect costs and applicable overcharges to their contracts noting that this is a close-out function. DCD will be available to Job Corps/ETA for any needed assistance in this process.

The Job Corps Chicago Regional Office, in coordination with the National Office and Regional OASAM Contracting Officer, will require the center operator to provide supporting documentation for the questioned costs in the amount of \$1.8 million. In the event that the contractor cannot support the questioned costs, liquidated damages will be assessed. Appropriate information to close this recommendation will be forwarded to the OIG.

We consider this recommendation resolved.

OIG Recommendation 2. Clarify policy and provide guidance and training to ensure that contracting officers monitor contractor compliance with the FAR regarding the requirement to submit indirect cost proposals to OASAM within six months of the conclusion of each of the contractor's fiscal years.

Response: Management accepts this recommendation.

During the first quarter of FY 2011, the Procurement Executive will issue a memorandum to all DOL contracting officers highlighting their responsibilities with regard to monitoring contractor compliance with the FAR and contractors' submission of indirect cost proposals as outlined in the Department of Labor Manual Series. In addition, management will add to the regular training regimen for contracting officers, specific instruction on these responsibilities. We believe this specific guidance and training, together with the commitment that DCD will examine the monthly reports from cost negotiators to find areas of possible improvement in monitoring activities, will effectively address this issue.

We consider this recommendation resolved.

OIG Recommendation 3. Establish a process to ensure timely reimbursement of overcharges resulting from the difference between provisional and approved indirect cost rates.

Response: Management accepts this recommendation.

During the first quarter of FY 2011, the Office of Job Corps will review its current Policy and Requirements Handbook, Job Corps Center Request for Proposal, and Procurement Compendium to determine if revisions will be needed regarding reimbursement of overcharges resulting from the difference between provisional and approved indirect cost rates. If revisions are necessary, the National Director of Job Corps will communicate to the Job Corps Regional

Directors that Job Corps center operators' Standard Operating Procedure (SOPs) must be updated to reflect the Office of Job Corps' new policy.

We consider this recommendation resolved.

OIG Recommendation 4. Establish procedures to ensure that the prime contractor is billed for overcharges resulting from the comparison of provisional and indirect cost rates that are submitted by the subcontractor.

Response: Management accepts this recommendation.

During the first quarter of FY 2011, Job Corps will modify the program's model Request for Proposal to state that the prime contractor will be accountable for overcharges resulting from the comparison of provisional and indirect cost rates that are submitted by the subcontractor. This language will become part of Section G, Financial and Funding Administration, of the contract award.

We consider this recommendation resolved.

OIG Recommendation 5. We also recommend the Assistant Secretary of Employment and Training direct Job Corps to require ATSI: Establish policies and procedures that ensure compliance with FAR and contract requirements for submission of indirect cost proposals

Response: Management accepts this recommendation.

Currently, Job Corps' Policy and Requirements Handbook, Job Corps Compendium for Regional Procurements, and the Job Corps Model Requests for Proposal (RFP) address indirect cost requirements.

The Job Corps Center RFP includes references to FAR 52.216-7 and FAR 42-7 in Section G, Contract Administration Data, Allowable Costs, which directs contractors, with cost reimbursement contracts for educational institutions, to submit cost proposals to their cognizant agency's office of cost determination at the end of each contract year. Specifically, the RFP informs contractors that indirect cost rates shall be negotiated by DCD or other cognizant audit agency as follows--

“In accordance with Clause 52.216-7, “Allowable Costs and Payment,” the contractor shall be reimbursed for allowable, allocable costs incurred in performance of the work under this contract. In addition to reimbursements for direct costs incurred, the contractor shall be reimbursed for indirect costs in accordance with the FAR 42.7, “Indirect Cost Rates.” Indirect Cost Rates shall be negotiated by the Department of Labor's Office of Cost Determination or other cognizant audit agency...”

The Job Corps Compendium for Job Corps Regional Procurement addresses indirect costs in Section 4, Contract Administration – Contract Closeout Procedures. This section informs Job

Corps staff that performing contractors are required to obtain final indirect cost rates for each fiscal year of the contract period from their cognizant audit agency.

“The Performing Contractor shall: 1) Obtain all final indirect cost rates for each fiscal year of the contract period from their cognizant federal agency...”

Based on the current policies and procedures, during the 1st quarter of FY 2011, the National Director of Job Corps will issue a memorandum through the Regional Offices to the Job Corps operators to establish corporate policies and procedures regarding the submission of indirect cost proposals. These new policies and procedures must be in compliance with FAR and contract requirements. Job Corps, in conjunction with the contracting officer, will direct ATSI to establish and implement policies and procedures to ensure compliance with the FAR and contract requirements for indirect cost proposals. The new ETA Office of Procurement will conduct the follow-up after October 24, 2010, when Job Corps’ contracting functions fully transfer to ETA.

We consider this recommendation resolved.

Based on the foregoing responses, we anticipate that the audit report’s recommendations will be resolved and can be closed upon completion of the corrective actions.

cc: T. Michael Kerr, ASAM
Edna Primrose, Job Corps
Al Stewart, OASAM
Carol Jenkins, OASAM
Victor Lopez, OASAM

ATSI's Response to Draft Report



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September 14, 2010

Operations
Management

Elliot P. Lewis, Assistant Inspector General
200 Constitution Avenue, NW
Room S-5512
Washington, D.C. 20210

Dear Mr. Lewis:

Organization
Development

The OIG Audit Report for Applied Technology Systems was issued less than 15 business days (August 24).

This audit began in October, 2006 which represents 4 years.

It states or “headlines” **Applied Technology Systems, Inc. Overcharged Job Corps for Indirect Costs.**

Youth
Development

The three statements above that refer to when we received the draft; the headline statement and the timeframe for when the audit started are mentioned to establish a perspective relative to this response.

Training &
Technical
Assistance

The reality is that this audit has gone on for four years and now that a draft report has been produced; OIG is demanding a response back in less than 10 days; ATSI is attempting to comply with this demand. Even though we have experienced a shortage of resources, personal tragedies and workload challenges; we are still in an effort to meet this deadline. The concern is that in the haste to meet the deadlines, ATSI misses the opportunity to conduct its own research, since ATSI was a different company in 2004 and half of 2005. We also forego the opportunity to reference the FAR in defense of the company for clauses that may support our claims. In addition, if it took 4 years for OIG to complete the audit, why wouldn't ATSI have at least 30 days to give an adequate response? Based on items cited between the offices of OIG and DCD there are records, receipts and files that have been disposed of – one in an effort to create an electronic file and one in an effort to create new books as a starting point for the new ATSI. A different accounting staff under different management was responsible for at least two years associated under the years that were audited.

Applied Technology Systems Incorporated

Files have been very hard to retrieve even to the point of resorting to contacting vendors.

In summary, ATSI does have concerns and some different calculations as it relates to OIG findings. What follows are those concerns but they are not as detailed due to what we see as time constraints.

Concerns:

- 1) As stated before, in an effort to reduce the liability that OIG has cited in its findings, ATSI should be given the opportunity to negotiate its rates within ceiling with the contracting officer based on previously approved rates; and for the approved rates that are higher than the ceiling rates in the contracts for those years. This approach is also supported by the FAR.

In your headline you say that ATSI overcharged Job Corps. As far as the work at Earl C. Clements and Gary Job Corps respectively ATSI charged the prime operator under a signed agreement. ATSI rates to the prime are not governed by the contract between the prime and Job Corps. This item should be looked into further so that the findings are accurate and is supported by the FAR. If anything it may show that ATSI DID NOT overcharge Job Corps, but there may be some questionable charges to the prime contractor. In those two relationships ATSI does not bill the government/Job Corps.

OIG ask "Did ATSI comply with federal regulations and contract provisions for reporting indirect costs"? OIG suggest that ATSI did not. This is not a true statement. OIG states that ATSI used provisional rates and violated the FAR by failing to submit ICP's to OSAM and neither Job Corps or OSAM requested the proposals. The fact is that when 2003 final rates were approved, DCD also approved provisional rates through CY 2005. Subsequently, these rates were not implemented in the billing cycle by the prior finance administration. Instead, the rates utilized were the rates agreed upon in the contracts signed by a contracting officer representing the Office of Job Corps.

As we bidded on contracts going forward, all contracts awarded were awarded with the DCD approved rates. ATSI has never operated a contract without approved and negotiated rates. Even when our rates expired they were still approved in the contracts.

If accountability is going to be rendered based on negligence in rate submission then all parties involved should be equally held accountable. It is not equitable to place all blame on the operator; especially since all rates were contractually binding.

Attached is a table that breaks down the rate differences between ATSI calculations and OIG's.

ATSI is still requesting an opportunity to provide back-up for the \$245,000 mentioned without supportive documentation. It has already been stated when this is a request. ATSI is short of resources; need at least 30 days for this response and this is data from 3 to 7 years ago.

Please review tables A, B and C, they illustrate rate comparisons reflecting OIG's findings in relation to ATSI scenarios which include ceiling rates, without the subcontracts in the calculation, and ATSI submission rates as DCD recently approved rates.

There are obviously other things cited that are petty but serious based on the intent on the operator, all should understand.

- My company's car allowance, ATSI must have not done it the right way.
- The partners' consultant agreements were never intended to be charges to be charged; you can check all ATSI tax submissions and see that this is true.

In closing, I want to reiterate that the time constraint did not provide the opportunity to be thorough. If you have any questions, please contact Mr. Gupta or myself.

Sincerely,

Clark V. Hayes
Chief Executive Officer

Cc: PK Gupta, CFO
Bob Richardson, OIG
Ray Armada, OIG

Attachments: Exhibits A, B & C

Original Final Rate Compare to ATSI's Ceiling Rates

EXHIBIT A

CV	Contract	Overhead			G&A			
		Base	Rate	Allowable Costs	Base	Rate	Allowable Costs	
2004	Div 2: Cleveland Div 3: Gary Div 4: MST-CTS Div 5: ECC Div 6: Detroit	3,749,756	11.230%	421,098	5,383,634	5.020%	270,258	
		4,024,729	8.040%	323,588	5,466,821	5.000%	278,261	
		1,085,720	8.750%	95,001	1,898,674	5.090%	96,643	
		2,485,389	8.730%	216,974	3,580,725	5.090%	182,259	
		3,680,413	5.430%	199,846	7,419,653	5.000%	370,983	
		CV Sub-Totals		1,256,507		1,198,404		
		2,225,519	7.430%	165,356	3,808,200	5.020%	191,172	
		1,611,583	7.430%	119,741	2,723,875	5.630%	153,354	
		3,283,274	3.060%	100,468	4,659,982	6.410%	298,705	
		1,036,229	8.750%	90,670	1,922,059	6.000%	115,324	
2,468,487	2.030%	50,110	3,494,478	6.410%	223,956			
3,685,202	4.110%	151,462	7,133,341	5.000%	356,667			
CV Sub-Totals		677,807		1,389,217				
2006	Div 2: Cleveland (Old) Div 3: Gary Div 4: MST-CTS Div 5: ECC Div 6: Detroit	4,271,645	3.690%	157,624	8,852,818	5.630%	498,414	
		439,415	8.000%	35,153	744,329	5.630%	41,906	
		146,472	8.000%	11,718	248,110	5.630%	13,969	
		2,230,724	2.520%	56,214	3,115,098	7.000%	218,057	
		3,691,252	5.430%	200,435	7,296,395	5.000%	364,820	
		CV Sub-Totals		461,144		1,137,165		
		4,341,593	1.990%	86,398	8,387,366	5.630%	472,208	
		709,414	4.610%	32,704	1,020,169	5.630%	57,436	
		2,396,908	0.430%	10,307	3,150,947	6.000%	189,057	
		4,043,484	3.810%	154,057	7,813,790	5.000%	390,650	
3,222,328	5.400%	174,006	6,204,333	5.000%	310,217			
CV Sub-Totals		457,471		1,419,607				
Sub-Total		2,852,929		5,094,393				
ATSI Ceiling Amount		4,522,646		5,139,506				
Total by Category		(1,669,717)		(45,113)				
Sub-Total		7,947,322		9,662,151				
ATSI Submission		(1,714,830)		(1,714,830)				
Additional Orig Questioned Costs								
Total Amount Overcharged		(1,714,830)						

Original Final Rate Compare to ATSI's Provisional (Billing) Rates w/o ECC & Gary's Contracts

EXHIBIT B

CY	Contract	Overhead			G&A		
		Base	x Rate	= Allowable Costs	Base	x Rate	= Allowable Costs
2004	Div 2: Cleveland	3,749,756	9.514%	356,752	5,383,634	4.130%	222,344
	Div 3: Gary	4,024,779	6.890%	277,304	5,466,821	5.090%	278,261
	Div 4: MST-CTS	1,085,720	8.750%	95,001	1,898,674	5.090%	96,643
	Div 5: ECC	2,485,389	8.730%	216,974	3,580,725	5.090%	182,259
	Div 6: Detroit	3,680,413	5.430%	199,846	7,419,653	5.000%	370,983
	CY Sub-Totals		1,450,877		1,150,489		
2005	Div 2: Cleveland (Old)	2,225,519	7.430%	165,356	3,808,200	4.130%	157,279
	Div 2: Cleveland (New)	1,611,583	7.430%	119,741	2,773,875	5.630%	153,354
	Div 3: Gary	3,283,274	3.060%	100,468	4,659,982	6.410%	298,705
	Div 4: MST-CTS	1,036,229	8.750%	90,670	1,922,059	5.460%	104,944
	Div 5: ECC	2,468,487	2.030%	50,110	3,494,478	6.000%	209,669
	Div 6: Detroit	3,685,202	4.110%	151,462	7,133,341	5.000%	356,667
CY Sub-Totals		677,807		1,280,618			
2006	Div 2: Cleveland	4,271,645	3.690%	157,624	8,852,818	5.630%	498,414
	Div 4: MST-CTS	439,415	8.000%	35,153	744,329	5.630%	41,965
	Div 4: MT-CTS	146,472	12.816%	12,816	248,110	5.460%	13,547
	Div 5: ECC	2,230,724	2.520%	56,214	3,115,098	6.000%	186,906
	Div 6: Detroit	3,691,252	5.430%	200,435	7,296,995	5.000%	364,820
	CY Sub-Totals		462,242		1,105,992		
2007	Div 2: Cleveland	4,341,593	1.990%	86,398	8,387,366	5.630%	472,209
	Div 4: MT-CTS	709,414	4.610%	32,704	1,020,169	5.630%	57,436
	Div 5: ECC	2,396,908	0.430%	10,307	3,150,947	6.000%	189,057
	Div 6: Detroit	4,043,484	3.810%	154,057	7,813,790	5.000%	390,690
	Div 7: Jacksonville	3,222,328	5.400%	174,006	6,204,333	5.000%	310,217
	CY Sub-Totals		457,471		1,419,607		
Sub-Total	ATSI Calculations	2,743,397		3,328,339		4,956,306	
	ATSI Submission					4,718,532	
	Total by Category			(584,942)		237,774	
	Sub-Total	ATSI Calculations		7,659,703		8,046,872	
		ATSI Submission				(347,168)	
	Grand Total					(347,168)	
	Additional Original Questioned Costs						
	Total Amount Overcharged					(347,168)	

ATSI Submission	Overhead			G&A		
	Base	x Rate	= Allowable Costs	Base	x Rate	= Allowable Costs
2004	1,450,877		1,150,489	1,197,075		1,109,391
2005	677,807		1,280,618	1,306,054		1,306,054
2006	462,242		1,105,992	1,106,014		1,106,014
2007	457,471		1,419,607	1,419,607		1,419,607
Sub-Total	3,048,397		4,956,306	4,956,306		4,956,306
Sub-Total	ATSI Submission		4,718,532			4,718,532
	Grand Total					(237,774)

ATSI Submission Rate vs. DCD Approved Rate

EXHIBIT C

CY	Contract	Overhead			G&A		
		Base	Rate	Allowable Costs	Base	Rate	Allowable Costs
2004	Div 2: Cleveland	3,749,756	11.230%	421,098	5,383,634	5.020%	270,258
	Div 3: Gary	4,024,729	10.270%	413,340	5,466,821	6.390%	349,330
	Div 4: MST-CTS	1,085,720	8.750%	95,001	1,898,674	5.020%	95,313
	Div 5: ECC	2,485,389	10.240%	254,504	3,580,725	6.000%	214,844
	Div 6: Detroit	3,680,413	5.430%	159,566	7,419,653	5.000%	370,983
	CY Sub-Totals		13,893,288		1,380,728		1,300,728
2005	Div 2: Cleveland (Old)	2,225,519	11.230%	249,926	3,808,200	5.020%	191,172
	Div 2: Cleveland (New)	1,611,583	8.140%	131,183	2,723,875	5.630%	153,354
	Div 3: Gary	3,283,274	10.270%	337,192	4,659,982	6.390%	297,773
	Div 4: MST-CTS	1,036,229	8.750%	90,670	1,922,059	5.460%	104,944
	Div 5: ECC	2,468,487	10.240%	252,773	3,494,478	6.000%	209,669
	Div 6: Detroit	3,685,202	5.430%	200,106	7,133,341	5.000%	356,667
CY Sub-Totals		12,611,850		1,261,850		1,313,579	
2006	Div 2: Cleveland	4,271,645	8.140%	347,712	8,852,818	5.630%	498,414
	Div 4: MST-CTS	439,415	8.750%	38,449	744,329	5.630%	41,906
	Div 4: MT-CTS	146,472	8.750%	12,816	248,110	5.460%	13,547
	Div 5: ECC	2,230,724	10.240%	228,426	3,115,098	6.000%	186,906
	Div 6: Detroit	3,691,252	5.430%	200,435	7,296,395	5.000%	364,820
	CY Sub-Totals		827,838		1,105,592		1,157,624
2007	Div 2: Cleveland	4,341,593	8.140%	353,406	8,387,366	5.630%	472,209
	Div 4: MT-CTS	709,414	8.000%	56,733	1,020,169	5.630%	57,436
	Div 5: ECC	2,396,908	10.200%	245,443	3,150,947	6.000%	198,057
	Div 6: Detroit	4,043,484	5.430%	219,561	7,813,790	5.000%	390,690
	Div 7: Jacksonville	3,222,328	5.400%	174,006	6,204,333	5.000%	310,217
	CY Sub-Totals		1,049,169		1,419,607		1,419,607
Sub-Total	ATSI Calculations			4,522,646		5,139,506	
	ATSI Submission			2,925,268		5,739,690	
	Total by Category			1,597,378		(600,184)	
	Sub-Total	OIG Calculations		9,662,151		Reconciled to Table 2, page 7, OIG Report	
	ATSI Submission			8,664,958		Reconciled to Actual Submission FY04, FY05, FY06, FY07	
	Grand Total			997,194		(245,531)	
	Total Amount to ATSI			751,663		OIG Questioned Costs, Table 3, page 8, OIG Report	

CY	Contract	Overhead			G&A		
		Base	Rate	Allowable Costs	Base	Rate	Allowable Costs
2004	Div 2: Cleveland	3,749,756	11.630%	436,097	5,383,634	5.090%	272,027
	Div 3: Gary	4,024,729	8.000%	323,588	5,466,821	5.090%	276,261
	Div 4: MST-CTS	1,085,720	11.730%	127,355	1,898,674	5.090%	96,643
	Div 5: ECC	2,485,389	8.730%	216,974	3,580,725	5.090%	182,259
	Div 6: Detroit	3,680,413	10.000%	368,041	7,419,653	5.090%	377,660
			1,472,056		1,208,850		
2005	Div 2: Cleveland (Old)	2,225,519	7.430%	165,356	3,808,200	6.410%	244,106
	Div 2: Cleveland (New)	1,611,583	7.430%	119,741	2,723,875	6.410%	174,600
	Div 3: Gary	3,283,274	3.060%	100,468	4,659,982	6.410%	296,705
	Div 4: MST-CTS	1,036,229	10.430%	108,079	1,922,059	6.410%	123,204
	Div 5: ECC	2,468,487	2.030%	50,110	3,494,478	6.410%	223,996
	Div 6: Detroit	3,685,202	4.110%	151,462	7,133,341	6.410%	457,247
		695,216		1,521,858			
2006	Div 2: Cleveland	4,271,645	3.690%	157,624	8,852,818	8.820%	780,819
	Div 4: MST-CTS	439,415	9.340%	41,041	744,329	8.820%	65,650
	Div 4: MT-CTS	146,472	9.340%	13,680	248,110	8.820%	21,883
	Div 5: ECC	2,230,724	2.520%	56,214	3,115,098	8.820%	274,752
	Div 6: Detroit	3,691,252	5.580%	205,972	7,296,395	8.820%	643,542
			474,532		1,786,645		
2007	Div 2: Cleveland	4,341,593	1.990%	86,398	8,387,366	6.000%	503,242
	Div 4: MT-CTS	709,414	4.610%	32,704	1,020,169	6.000%	61,210
	Div 5: ECC	2,396,908	0.430%	10,307	3,150,947	6.000%	189,057
	Div 6: Detroit	4,043,484	3.810%	154,057	7,813,790	6.000%	468,827
	Div 7: Jacksonville	3,222,328	6.000%	193,340	6,204,333	6.000%	372,260
			283,465		1,222,336		