

Appendix D

MSHA's Response to Draft Report

U.S. Department of Labor

Mine Safety and Health Administration  
1100 Wilson Boulevard  
Arlington, Virginia 22209-3939



JAN 28 2011

MEMORANDUM FOR ELLIOT P. LEWIS  
Assistant Inspector General for Audit

FROM: JOSEPH A. MAIN   
Assistant Secretary of Labor for  
Mine Safety and Health

SUBJECT: MSHA Response to Draft Audit Report  
No. 06-11-001-06-001 --  
"MSHA's Controls Over Contract Awards Need  
Strengthening"

Thank you for the opportunity to review the Office of Inspector General (OIG) draft audit report "MSHA's Controls Over Contract Awards Need Strengthening" (Draft Audit Report No. 06-11-001-06-001) on Mine Safety and Health Administration (MSHA) procurement practices. As noted below, MSHA already has begun to implement a number of the report's recommendations. We are using the report to continue our efforts to direct meaningful and lasting improvements to procurement procedures and to strengthen program management and oversight.

We agree that additional management controls and oversight would strengthen accountability. However, we would like to reiterate MSHA's longstanding commitment to a robust procurement program that provides both opportunities for small business and a successful competitive environment that maximizes value for the government. In each of Fiscal Years 2008, 2009, and 2010, MSHA awarded more than 70 percent of all procurement dollars spent to small businesses. In addition, MSHA exceeded the small business goals established by the Department of Labor's Office of Small Business Programs (OSBP) for the period covered by the audit. In fact, MSHA has exceeded its small business goals for the past seven years and has one of the highest set-aside goals in the Department of Labor.

In response to the audit, MSHA is taking aggressive action to review its procurement program, identify lapses, and correct them. For each of the contracts with deficiencies identified in the OIG draft audit report, MSHA is implementing corrections wherever possible. If corrections cannot be made, AMD will insert documentation in the contract file explaining why the corrective action was not implemented.

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Below are specific responses to your recommendations.

**OIG Recommendation 1:** *Ensure MSHA procurement officials comply with procedures for PRB review and CAO approval as required by DOL policy.*

MSHA agrees with this recommendation. MSHA is developing and implementing new management procedures to require concurrence by the contracting officer prior to contract award to determine whether the procurement action is subject to PRB review based upon DOL policy requirements, and if so, has received PRB review and CAO approval. MSHA also will institute a new monthly tracking report by the Acquisition Management Division (AMD) to the Director of Administration and Management, with quarterly reports to the Office of the Assistant Secretary (OAS) to verify that DOL policy and procedures have been met.

**OIG Recommendation 2:** *Require the Director of A&M to document, prior to final contract award, supervisory review of all contracts awarded without full and open competition, all contracts with a value of \$100,000 or more, and a representative sample of contracts valued from \$25,000 - \$100,000.*

MSHA agrees with this recommendation. MSHA will implement new management procedures to require two levels of supervisory review of all contracts awarded without full and open competition and all contracts with a value of \$100,000 or greater. MSHA will develop and implement a sampling methodology for the two-level supervisory review of a sample of contracts valued from \$25,000 - \$100,000. Such first-level reviews will be conducted by the AMD Director, and a second-level review will be conducted by Deputy Director of A&M. Until the Deputy Director position is filled, the Director of A&M will conduct the second-level review. The reviews will be documented.

**OIG Recommendation 3:** *Define and implement a program to provide refresher training on procurement requirements contained in the FAR, DOLAR, and DLMS to all MSHA contracting personnel at least annually.*

MSHA agrees with this recommendation. We are aware that procurement requirements change frequently, and we are fully committed to maintaining a highly skilled cadre of contracting personnel that is trained in the latest procurement requirements.

Currently, all MSHA Contracting Officers are taking training to achieve FAC-C Level II certification. The FAR requirements are covered as part of FAC-C Level II certification. FAC-C Level II training for MSHA personnel is currently being reported to the Department's Office of the Assistant Secretary for Administration and Management as it occurs on a time table acceptable to the Assistant Secretary for Administration and Management.

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In addition, in response to MSHA's request OASAM has agreed to provide specific, targeted training on appropriations law requirements, the DOLAR, and the DLMS during the second quarter of FY 2011. This training will address the deficiencies identified in the draft audit report and will be mandatory for all Agency acquisition personnel. In addition, refresher training will take place annually.

**OIG Recommendation 4:** *Develop and implement controls to track AMD's compliance with the provisions of the MOA with the Department's SOL.*

MSHA agrees with this recommendation. We have agreed with the Office of the Solicitor (SOL) to extend the existing Memorandum of Agreement (MOA) for three years, with adjustments to clarify points of confusion or previous conflicts in interpretation, and to respond to specific changes in the procurement process (e.g., an increase in the Simplified Acquisition Threshold) that have taken place since the original MOA. By improving clarity and deleting vague terms that had been subject to different interpretations by MSHA and SOL, the new MOA will facilitate compliance.

As noted above, MSHA will institute a new monthly tracking report by the Acquisition Management Division (AMD) to the Director of Administration and Management, with quarterly reports to the Office of the Assistant Secretary (OAS) to track AMD compliance with DOL policy and procedures, including the MOA with the Department's SOL.

#### Conclusion

MSHA appreciates the significant time that the OIG staff has dedicated to reviewing its procurement program and preparing the draft report. The OIG recommendations and planned management actions in response will improve the effectiveness and accountability of contracting in MSHA.