

ETA's 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 *Jane Oates*
Assistant Secretary

SUBJECT: OIG Audit Draft Report No. 26-11-002-03-370,
*"Adams and Associates Did Not Ensure Best Value in Awarding
Sub-Contracts at the Red Rock Job Corps Center"*

This memorandum responds to the subject draft audit report, dated September 9, 2011, Draft OIG Audit Report No. 26-11-002-03-370, *"Adams and Associates Did Not Ensure Best Value In Awarding Sub-Contracts at the Red Rock Job Corps Center."* 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.

Adams and Associates (Adams) procurement polices minimally must meet the requirements of FAR Part 44.303 and FAR Part 52.244-5. Adams 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 Adams East Cost corporate headquarters in Columbia, Maryland. The draft report will be submitted to the cognizant Contracting Officer, which includes recommendations to improve Adams procurement SOPs. A copy of the final report will be available upon request. It is important to note that currently Adams does not have an approved purchasing system.

We consider this recommendation resolved.

OIG Recommendation 2: Repay questioned costs totaling \$334,675. 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:

| Table 1: Instances of FAR non-compliance resulting in questioned costs | | |
|---|--|--|
| FAR Non-compliance | Sub-contracts above \$25,000 / amount of questioned costs | Expenditures above \$3,000 / amount of questioned costs |
| (a) Sub-contract award evaluation factors not developed and employed | 2 of 2 (100%) \$216,780 | Not Applicable |
| (b) Improper awarding of Blanket Purchase Agreement | Not Applicable | Sample: 11 of 59 (19%) \$97,198 |
| (c) Inadequate sole source justification | Not Applicable | Sample: 2 of 59 (3%) \$20,697 |
| Totals \$334,675 | 2 of 2 (100%) \$216,780 | Sample: 13 of 59 (22%) \$117,895 |
| | | |

- (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) We agree with the OIG, Adams 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 \$117,895 questioned by the OIG.

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 Adams 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 Adams to update SOPs to provide for regulatory and statutory oversight, rather than supervisory oversight.

We consider this recommendation resolved.

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

Response: Management accepts this recommendation in part.

OCM will ensure Adams complies with regulatory requirements. OCM conducted a Contractor Purchasing System Review of Adams East Coast corporate in September 2011. The review is currently being analyzed prior to the Contracting Officer (CO) approving Adams purchasing system. As Adams 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 provide tools to COTRs/Project Managers to assist in the monitoring of the purchasing practices of Adams.

We consider this recommendation resolved.

OIG Recommendation 6: Review all future Adams Red Rock sub-contracts for FAR compliance prior to approval.

Response: Management accepts this recommendation

Adams does not have an approved purchasing system; as such, the majority of their 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.

Adams Response to Draft Report

ADAMS  ASSOCIATES, INC.

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September 23, 2011

Mr. Elliot P. Lewis
Assistant Inspector General for Audit
Office of Inspector General, U.S. Dept. of Labor
200 Constitution Ave., N.W. Room S-5512
Washington, D.C. 20210

Dear Mr. Lewis:

Adams & Associates, Inc (“Adams”) provides this reply to the September 12, 2011 Draft Audit Report by the Department of Labor (DOL) Office of Inspector General (OIG) regarding Adams’s government contract with the DOL to operate the Red Rock Job Corps Center (“Red Rock JCC”).

We fundamentally and strongly disagree with the Draft Audit Report in its entirety. We refute and disagree with the OIG’s entire basis for imposing requirements upon Adams – that is, the OIG’s misapplication of all of the FAR provisions cited the Draft Audit Report. We wholly oppose the OIG’s overreaching draft finding that “Adams Red Rock did not ensure best value was received by the government when awarding sub-contracts and purchase orders.” We disagree with the OIG’s specific findings, as well as the recommendation that Adams repay questioned costs, particularly in light of the fact that the OIG questioned costs “due to non-compliance with the FAR.” Support for our viewpoint is detailed throughout this letter. In many instances, because we have already provided much of this information through our response to the OIG’s Statement of Facts and our response to the OIG’s “Discussion Draft” regarding the Red Rock JCC, this will be the third time we provide these specific substantive responses in writing.¹

Adams strongly disagrees with the OIG’s draft finding that “Adams Red Rock did not comply with the FAR [Federal Acquisition Regulation] when awarding subcontracts and selecting vendors,” 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 May, the OIG has insisted that Adams, 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. That is not the law.

¹ In response to the “Discussion Draft” Report issued by the OIG in August 2011, we prepared a written response and submitted it to the OIG on August 22, 2011. For the convenience of the OIG, that letter is attached hereto and we request that a complete non-edited full-text version of that Response be incorporated as part of the Final Audit Report issued by the OIG.

Adams has repeatedly requested the OIG to support the underlying premise of this audit by simply identifying where in the FAR, or in Adams's contract with DOL, any of these alleged "requirements" can be found. 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 Adams, the OIG neither cited nor quoted any specific FAR provisions. Subsequently, after repeated urging by Adams, the OIG provided a "Discussion Draft" which cited, but conspicuously declined to quote, at least seven (7) FAR provisions that supposedly applied here. In response, Adams had to prepare a detailed analysis that showed, by direct verbatim quotes, that each and every one of the seven supposedly applicable FAR provisions 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, in this case Adams. Nor was a single one of those FAR provisions contractually flowed-down to Adams in Adams's prime contract. In our Response to the Discussion Draft, we informed the OIG that in the absence of such flow-downs, it is overreaching, unfair and incorrect to issue audit findings and to question payment for valuable services rendered, on the incorrect premise that such contractor "requirements," though totally absent from the FAR and the contract, are nonetheless "applicable."

Now, the OIG has responded with this new Draft Audit Report, almost completely withdrawing (without acknowledgement of error) its previous reliance upon the inapplicable FAR provisions, and replacing them with citations (but again, no quotation) of five different and previously unmentioned FAR provisions, namely FAR 44.202-2(a)(5), (a)(7), (a)(8) and (a)(11) and 9.104-1, as the legal basis for its findings of "noncompliance."² See Draft Audit Report at pg. 6. Yet again, Adams bears the burden and expense of having to explain what should be obvious on the face of these new citations: that they too do not impose any "requirements" on the contractor. Nor are they contractually flowed-down to Adams, any more than the previously cited FARs were. Accordingly, we provide a brief analysis and discussion of these newly-cited FAR sections, their background, and their inapplicability to the audited transactions here:

NEWLY CITED FAR PROVISIONS ARE INAPPLICABLE TO ADAMS

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. The "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

² The OIG continues to rely improperly on FAR 6.302 (see Draft Audit Report, pg. 3) and FAR 32.905 (Draft Audit Report, pg. 6), previously referenced in the OIG's Discussion Draft. Accordingly, below, this Response reiterates its analysis showing that these FAR provisions on their face pertain only to contract award decisions by the government contracting officer at the prime level, and not to subcontract award decisions by Adams.

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: ...” (Emphasis added.) The FAR goes on to list thirteen (13) questions among those to be “considered,” four of which are cited by the OIG (Draft Audit Report, pg. 6) as the basis of its findings, namely:

- (a)(5) “Was adequate price competition obtained or its absence properly justified?;
- (a)(7) “Does the contractor have a sound basis for selecting and determining the responsibility of the particular subcontractor?;”
- (a)(8) “Has the contractor performed adequate cost or price analysis or price comparisons and obtained certified cost or pricing data and data other than certified cost or pricing data?;” 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. 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 “requirements” alleged on pages 6-9 of the Draft Audit Report: 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,” etc. 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 are flowed-down to lower levels (which is not the case here). However, it defies common sense and plain English to contend that these requirements 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.

Furthermore, the OIG should be aware of another fundamental point about “Consent to Subcontracts” under FAR 44.2: even if the contracting officer’s “considerations” regarding consent to subcontracts could somehow provide the basis for imposing specific “requirements” upon Adams, (which they cannot), the “consent” process does not apply to BPAs (blanket purchase agreements). A “subcontract” must be a “contract” in the first place. See FAR 44.101, definition of “subcontract.” But 11 of the 13 supposedly improper expenditures noted in the Draft Audit Report (see p. 8) pertain to “BPAs,” 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 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 FireCrew 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 “considerations” for “consent” could be the basis for specific requirements imposed on a contractor, they would not apply to the US Foods and Sysco BPAs audited here, because BPAs are not even “contracts” to begin with. (See Draft Audit Report, pg. 8.)

Only the Philadelphia College of Osteopathic Medicine (PCOM) and Behavioral Health Services (BHS) subcontracts here were subject to the FAR Part 44.2 “consent” requirements that are imposed upon *contracting officers*. The files confirm that both of these were duly and expressly consented to by the DOL contracting officer, 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, and in any case, even if there was, such failure to consider on the part of the contracting officer would not constitute any non-compliance on the part of Adams.

The OIG also cites, for the first time in its Draft Audit Report, FAR 9.104-1. This provision sets forth General Standards for determination of whether a prospective contractor is responsible. The policy underlying FAR 9.104-1 is set forth in FAR 9.103(b), which states that “No purchase or award shall be made unless the *contracting officer* makes an affirmative determination of responsibility.” (Emphasis added.) Once again, on its face, this provision applies to decisions of *government contracting officers* in selecting and contracting with prime contractors; nowhere does the provision indicate that prime contractors must follow these General Standards in selecting their subcontractors. Nor was this FAR provision contractually flowed-down to Adams in Adams’s prime contract with DOL.

The OIG’s misplaced reliance on these inapplicable FAR provisions, at the eleventh hour, is not only incorrect, it is yet another example of the OIG’s improper and unfair overreaching, particularly in light of the hundreds of thousands of dollars that the OIG questions based on its misapplication of these FAR provisions. Rather than continue down this inappropriate and erroneous path, the OIG has a duty in its Final Audit Report withdraw all findings based on these inapplicable FAR provisions.

THE FAR PROVISIONS PREVIOUSLY CITED IN THE “DISCUSSION DRAFT” AND REITERATED IN THE OIG’S DRAFT AUDIT REPORT ARE INAPPLICABLE

The OIG in its Draft Audit Report repeats its reference to and reliance on two other FAR provisions that are inapplicable, despite soliciting and obtaining from Adams in Adams’ Response to the OIG’s Discussion Draft, a detailed textual analysis explaining why these provisions are inapplicable to Adams. The OIG in its Draft Audit Report disregards Adams’ explanations. Thus, we reiterate our analyses with respect to FAR 6.302³ and 32.905:

FAR 6.302-2 describes circumstances under which agencies need not conduct full and open competition. On its face, this provision does not apply to prime contractors. Specifically, FAR 6.302-2 provides: “When the *agency’s* need for the supplies or services is of such an unusual and

³ The Draft Audit Report, p. 3 states that for two expenditures, Adams “did not adequately justify sole source procurement as required by the FAR 6.302.”

compelling urgency that the Government would be seriously injured unless the *agency* is permitted to limit the number of sources from which it solicits bids or proposals, full and open competition need not be provided for.” (Emphasis added.) This provision has not been flowed down to Adams. Accordingly, this provision does not apply to Adams as a prime contractor that hires a vendor or subcontractor.

FAR 32.905 pertains to the content and payment of invoices submitted by contractors. The requirement to maintain supporting documentation for allowable costs is at FAR 31.201-2(d) and FAR 52.216-7 (Allowable Cost and Payment Clause).

OTHER INACCURACIES AND IMPROPER METHODOLOGIES IN THE OIG’S FINDINGS REGARDING THE AUDITED SUBCONTRACTS AND EXPENDITURES

Assuming for the sake of argument that “applicable” FAR provisions were not complied with (which, as previously stated, Adams denies), the OIG has used improper methodologies and made several inaccurate findings about the subcontracts and expenditures at issue. Some of the same improper methodologies that the OIG employed in its Discussion Draft are blindly reiterated in the OIG’s Draft Audit Report, without ever addressing the merits of Adams’ responses to those items in the Discussion Draft. Accordingly, we reiterate our analyses and disagreement with those approaches.

1. The OIG Overreaches by Questioning the Entire Cost of Each Subcontract at Issue

We have a strong objection to the OIG’s determination of the amount of questioned costs. The OIG’s methodology has evidently been to question the entire subcontract value of any subcontract that was awarded according to procedures that have been found “noncompliant.” With respect to the physician’s services contract that Red Rock JCC awarded to Pennsylvania College of Osteopathic Medicine (“PCOM”), the OIG questioned the entire amount of the \$131,108 contract. (Draft Audit Report, pgs. 7-8.) With respect to the mental health services contract the Red Rock JCC awarded to Behavioral Health Services (“BHS”), the OIG questioned the entire \$85,672 subcontract amount. (Draft Audit Report, pg. 8.) As we previously explained in our response to the OIG’s Discussion Draft, it is illogical and wrong to question the allowability of the entire subcontract value. For both of the subcontracts at issue in the audit, the Job Corps received valuable consideration (services rendered) in return for its payment to Adams of these subcontract costs. The detriment theoretically suffered by the Job Corps if there had been a procedural noncompliance (e.g., failure to use an allegedly required evaluation factor; failure to provide an allegedly required “sole source justification”; failure to obtain consent to subcontract) obviously does not mean that the Job Corps received no value for the services represented by that subcontractor cost. The value of such an alleged procedural noncompliance, if one existed, would be only a fraction of the total subcontract value. To question and disallow the entire subcontract value would amount to a windfall for the government: valuable services for free, which would be illegal under the Anti-Deficiency Act. The amount of costs in question here, even assuming any were properly questionable, should be no more than a fraction of the cited subcontract values, to represent the reasonable value to the government of the procurement procedures at issue.

The OIG in its Draft Audit Report minimally acknowledges the merits of Adams’s analysis, noting in a footnote: “We questioned the entire value of the sub-contracts. 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 rendered.” (Draft Audit Report, pg. 2, note 1.) While Adams appreciates this small, implied acknowledgement by the OIG, the more salient point is that the OIG continues to question the entire value of hundreds of thousands of costs for valuable services rendered. This leave Adams – well over a year after inception of the audit and after several rounds of submitting substantive information and costly legal analysis to the OIG – in an unsettled state without any information as to the true amount of costs in dispute. This methodology imposes an unjust burden on Adams.

Overreaching even further, the OIG continues to question costs that Adams has not yet incurred, and the Government has not yet paid. For instance, the two-year subcontract with PCOM began in 2010, and is for \$131,108. However, during the audit period the total costs incurred for services rendered by PCOM were \$42,873, and the total costs incurred to date are \$95,782. The two-year subcontract with BHS also began in 2010, and is for \$85,672. However, during the audit period the total costs incurred for services rendered by BHS were only \$12,908 and the total costs incurred to date are \$32,365.

2. The OIG Provides No Basis for its Supposed Sampling Methodology

In addition, with respect to the OIG’s sample of 54 expenditures, we also take issue *again* with the OIG’s unexplained “projection” of questionable costs based on extrapolation from a small sample of transactions. (See Draft Audit Report at page 9, notes 2 and 3.) We brought this impropriety to the OIG’s attention in our response to the Discussion Draft Report, but the OIG does not address it in its Draft Audit Report. Instead, once again, the OIG provides no explanation for its “95 percent confidence” level in its “projections,” or any information about how the samples were selected, why they are a reliable basis for “projection,” and how the “projection” was determined, yet large sums are questioned on the basis of this unexplained methodology.

In addition to the above-described approaches that the OIG recycled from its Discussion Draft Report, for the first time in its Draft Audit Report, the OIG has made a new finding with which we disagree.

3. The OIG Improperly Recommends That All Future Adams Red Rock Sub-contracts Be Reviewed for FAR Compliance and Approval Prior to Award

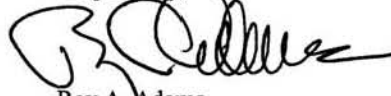
The OIG recommends that ETA contract personnel and Job Corps regional staff review all future Adams Red Rock sub-contracts for FAR compliance and approval prior to award. (See Draft Audit Report, pgs. 3 and 10) Such a recommendation, if implemented, would completely defeat the purpose of using the streamlined CPSR system, a right that Adams’ Red Rock JCC has earned by virtue of the contracting officer’s consent. In addition, requiring this additional layer of approval on every subcontract – no matter the subcontract type, subcontract value, services

provided, or other terms – would be a completely inefficient means of doing business. Indeed, the Red Rock JCC has only one Purchasing Agent who processed almost 2000 transactions (in purchase orders alone) during the one-year contract period from 5-1-2010 to 4-30-2011. We are concerned that the OIG's expectations cannot be reasonably met, would require significantly increased Center staffing at the Red Rock JCC, and may be so cumbersome that student and Center needs will suffer. Furthermore, yet again, the OIG appears to be taking the position that Adams, as a Job Corps Center operator, should be held to the same requirements as Government Agency Contracting Officers. This is particularly incongruous given that Job Corps Contracting Officers typically process only four or five major procurements per year, with an Assistant and a Proposal Review Team. In addition, the OIG's recommendation is particularly egregious considering that it is a corollary to the OIG's utterly incorrect findings that Adams failed to comply with specific FAR provisions (that are in fact inapplicable to Adams as a prime contractor with DOL).

In the Appendix attached to this letter, we respond in more detail regarding the specific transactions identified in the Draft Audit Report. Notwithstanding the inapplicability of the FAR provisions cited by the OIG, we provide some of the activities that we undertook to ensure that our process is reasonable and offers best value to the government.

The OIG obviously feels strongly that DOL Job Corps contractors 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, the bottom line for this audit is that contractors are obviously not currently subject to such requirements, neither pursuant to the FAR, nor by contractual flow-downs. The OIG is incorrect in its analysis, yet continues to insist on holding Adams to a standard based on inapplicable requirements. Consequently, Adams has had to incur substantial cost trying to get across what is really a very straightforward and obvious point. This is unjust. We request that the Draft Audit findings adverse to Adams be withdrawn.

Respectfully,



Roy A. Adams
President
Adams and Associates, Inc.

Attachments

cc: Ray Armada, *OIG Audit Director*
Michael Elliot, *OIG Audit Manager*
Pat Trager, *OIG Lead Auditor*
Dan Norem, *Exec. V.P., Adams and Associates, Inc.*
Susan Larson, *Exec. V.P., Adams and Associates, Inc.*
Debbie Cavathas, *Exec. Director of Finance and Administration, Adams and Associates, Inc.*
Glenn Ziese, *CFO, Adams and Associates, Inc.*

APPENDIX

Below are Adams and Associates, Inc.’s responses to the specific concerns detailed in the OIG audit of the Red Rock Job Corps Center. We have previously provided full back-up source documentation that clearly validate the subcontracts and expenditures questioned with the Draft Audit Report. The documentation refutes each of the OIG draft concerns. We request that these findings be eliminated and the proposed penalties removed.

Original documents have been previously provided to the OIG and a copy is available upon request for the Department of Labor for further review.

OIG Draft Concerns
 [Draft Audit Report pg. 7]

| FAR Non-compliance | Sub-contracts above \$25,000 / amount of questioned costs | Expenditures above \$3,000 / amount of questioned costs |
|--|--|--|
| <i>Sub-contract award evaluation factors not developed and employed. FAR 44.202-2 (a) (7) and (11)</i> | 2 of 2 (100%) \$216,780 | Not Applicable |
| <i>Improper awarding of Blanket Purchase Agreement FAR 44.202-2 (a) (7) and (11)</i> | Not Applicable | Sample: 11 of 54 (20%) \$97,198 |
| <i>Inadequate sole source justification. FAR 44.202-2(a) (7) and (11)</i> | Not Applicable | Sample: 2 of 54 (4%) \$20,697 |
| Totals \$334,675 | 2 of 2 (100%) \$216,780 | Sample: 13 of 54 (24%) \$117,895 |

Red Rock JCC Response: Table 1

As set forth in detail in the accompanying cover letter, FAR 44.202-2(a)(7) and (a)(11) are provisions which a *government contracting officer* must *consider* in determining whether to give consent to subcontracts. These FAR provisions do not impose any requirements upon Adams as a prime contractor. Furthermore, as set forth above, the consent to subcontracts requirements do not apply to BPAs. Hence, Adams has not violated any applicable FAR provisions. (See Draft Audit Report at pg. 5, noting that Center operators “shall follow all *applicable* procurement relations, to include those contained in the Federal Acquisition Regulations (FAR)” (emphasis added).) Because the above-cited FAR provisions are inapplicable on their face to Adams as a prime contractor, and because these FAR provisions have not been flowed down to Adams in its prime contract with DOL, the OIG’s entire basis for questioning these costs is flawed and

incorrect. There is no FAR non-compliance by Adams. The OIG should withdraw its questioning of all \$334,675.

OIG Draft Concern: Sub-contracts above \$25,000 where FAR Non-compliance Resulted in Questioned Costs

[Draft Audit Report pgs. 7-8]

The two sub-contracts we questioned were for physician services, including mental health. It was critical for Adams Red Rock 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 questioned the two sub-contracts because the center did not perform a cost or price analysis or develop and clearly state in the solicitation the factors and significant sub-factors that affected contract award and their relative importance. Additionally, the center did not develop a means of rating the bids and evaluating the past performance of the bidders. Possible evaluation factors for physician services included past performance providing services to a diverse student population, ages 16-24; evidence of performance on similar type contracts; ability to conduct comprehensive mental assessments, write and supervise treatment plans, and provide individual and group therapy and training; and evidence of a license to practice in the state and of current liability insurance coverage. We based our conclusions on the following:

OIG Draft Concern: Philadelphia College of Osteopathic Medicine (PCOM)

[Draft Audit Report pgs. 7-8]

In 2010, Adams Red Rock awarded a 2-year, \$131,108 physician services contract to Pennsylvania College of Osteopathic Medicine (PCOM). PCOM had been Adams Red Rock's physician services provider under the last center operator. In awarding the sub-contract, Adams Red Rock requested bids on the FedBizOps website and received two bids. Adams Red Rock awarded the sub-contract to PCOM even though they were the higher bidder. The center's bid evaluation records noted that the lower bidder was not awarded the sub-contract because they were unable to identify a physician for the center and PCOM was a longtime provider of student health care at the center.

We concluded that Adams Red Rock did not comply with FAR sections 44.202-2(a) (7) and 44.202-2(a) (11) when selecting PCOM. The center did not perform a cost or price analysis, did not use evaluation factors in its solicitation and selection processes, did not properly document the evaluation, and did not properly justify the selection of a higher bid. The lower bidder's proposal package did, in fact, identify a physician for the center. Additionally, Adams Red Rock's records did not include any documentation indicating the quality of past services provided by PCOM (e.g., prior center operator assessments, student surveys) and the center did not obtain approval by a Job Corps Contracting Officer before awarding the sub-contract to PCOM as required by Adams' contract to operate the center. As such, we questioned the entire amount of the \$131,108 sub-contract.

Red Rock JCC Response: Philadelphia College of Osteopathic Medicine (PCOM)

As set forth in detail in the accompanying cover letter, FAR 44.202-2(a)(7) and (a)(11) are provisions which a *government contracting officer* must *consider* in determining whether to give consent to subcontracts. These FAR provisions do not impose any requirements upon Adams as a prime contractor. Nor have these provisions been flowed down to Adams in its prime contract with DOL. As such, these provisions do not impose upon Adams any requirement to perform a costs or price analysis, use evaluation factors, or justify the selection of a higher bid, etc. We note that we have brought the inapplicability of these supposed “requirements” to the attention of OIG in the cover letter accompanying our May 13, 2011 Response to Statement of Facts (“Response to SOF”), as well as our August 22, 2011 Response to the Discussion Draft (“Response to Discussion Draft”). Notwithstanding the inapplicability of the authority cited by the OIG, below we repeat some of the activities that we undertook to ensure that our process is reasonable and offers best value to the government:

The audit concern that price analysis or price competition was not performed is incorrect. In addition to posting the Medical Subcontract solicitation on the GPE (Fedbizops), the solicitation was posted in the local papers within Sullivan County, PA and its environs. The goal was to ensure that opportunities were granted to the local community as well as ensuring that competitive prices were obtained, guaranteeing that the cost of the contract awarded to the successful bidder is reasonable. In addition, the audit concern that evaluation of bids was not properly documented is incorrect. The bids obtained from the bidders were analyzed on the bid abstract which showed the analysis of the prices. This was part of the basis used for the award of the contract.

As we originally informed the OIG in our “Response to SOF”, the lowest bidder was not selected because included in the cover letter of the PCOM is the name of a designated Doctor to be assigned to the sub-contract at the Red Rock Job Corp Center. This information was helpful in determining if the institution as well as the practitioner was **not** on the Excluded Parties List. Unlike PCOM, Global Health Group’s package has a **“Line of Authority Chart”** which showed the positions and names of personnel that are assigned to the Red Rock Project but failed to provide the name of the Physician who will perform the medical services at the center. As such, the center could not search the Excluded Parties List System to verify that the prospective physician is not on the debarred list. Thus, being a critical piece of the award process, we could not award the contract to Global Health Group even though they were the lower bidder. This information and supporting documentation was provided to the OIG again in our Response to the Discussion Draft, but the OIG continues to disregard it and continues to insist without support that “[t]h lower bidder’s proposal package did, in fact, identify a physician for the center. Additionally, PCOM provided option year bid information, but the Global Healthcare Group bid only on the base years and no option year bids were provided.

Included in the company’s proposal for the operation of the Red Rock Job Center was a provision to continue the Medical services of the incumbent service provider of the previous contractor for a 90 day period. In PCOM’s letter, reference was made to its long time relationship with the Red Rock Job Corps Center, under the previous contractor and the interim period with Adams and Associates, Inc. and their willingness to continue such relationship with center.

With regard to the OIG's concern that the center did not obtain approval by a Job Corps Contracting Officer before awarding the sub-contract to PCOM, the center presented the Consent to Place a Subcontract form to the Philadelphia Regional Job Corps Office on 8/1/10 and awaited their approval to execute a subcontract with PCOM. As part of the center's responsibility to provide medical and dental services to its student body under the prime contract, the center was required to ensure that a contract was timely executed and as such signed the subcontract with PCOM while awaiting the signed copy of the Consent to Place a Subcontract from the Region. To protect the government as well as the company, there is a non-availability of fund clause which the subcontractor agreed to prior to executing the subcontract. This term allows termination of the subcontract in the event that government funds are no longer available to support the Subcontract *for any reason* during its term. The Regional Office signed the consent form on 11/22/10.

Furthermore, as previously explained in our Response to the Discussion Draft, although the Regional Office signature date is after the effective date of each subcontract, this is not unusual or contrary to past Job Corps practices. Indeed, such operating practices have been the norm at Job Corp Centers across the country for many years, and contractors are sometimes left to await approvals for 6 months or more. In the meantime, the JCC operators, such as Adams at Red Rock JCC, are responsible and obligated to provide these mandated and critical services to ensure that that students receive them, while awaiting the Contracting Officer's approval. Indeed, per the Job Corps Policies and Requirements Handbook ("PRH"), Adams is required to provide certain medical services to students (who enroll at the Center on a weekly basis) within 48 hours of their enrollment. Adams's failure to meet the contractual requirement to timely provide medical services would potentially subject it to a finding that costs should be disallowed. Of course, Adams, as a contractor, does not have the ability to control the timeliness of Government Contracting Officers' responses to consent requests. In this instance, the Government had full knowledge that Adams had engaged these particular subcontractors, and not only did the Government not object, it affirmatively accepted the benefits of these services. In fact, the Contracting Officer acknowledged that she signed the consents to subcontract "after the fact," but told Red Rock operators that she informed the Auditors that the "documentation was reasonable, and the most important -- was in the interest of the STUDENTS -- they were signed." Hence, this situation clearly does not warrant disallowance of the costs of this subcontract.

OIG Draft Concern: Behavioral Health Services

In 2010, Adams Red Rock awarded a 2-year, \$85,672 mental health services contract to Behavioral Health Services. In awarding the sub-contract, Adams Red Rock requested bids on the FedBizOps website and received three bids. The center awarded the sub-contract to the lowest bidder, Behavioral Health Services. Adams Red Rock officials stated the center awards sub-contracts to the lowest bidder, unless there is a known problem with the lowest bidder. Additionally, the center did not obtain approval by a Job Corps Contracting Officer before awarding the sub-contract to Behavioral Health Services as required by Adams' contract to operate the center. As such, we questioned the entire \$85,672 sub-contract amount. We concluded that Adams Red

Rock did not comply with the following FAR sections 44.202-2(a) (7) and 44.202-2(a) (11) when selecting Behavioral Health Services.

Red Rock JCC Response: Behavioral Health Services

As set forth in detail in the accompanying cover letter, FAR 44.202-2(a)(7) and (a)(11) are provisions which a *government contracting officer* must *consider* in determining whether to give consent to subcontracts. These FAR provisions do not impose any requirements upon Adams as a prime contractor. Nor have these provisions been flowed down to Adams in its prime contract with DOL. As such, these provisions do not impose upon Adams any requirement to use evaluation factors, or to justify the selection of *lower* bidder, etc. Notwithstanding the inapplicability of the authority cited by the OIG, below we discuss some of the activities that we undertook to ensure that our process is reasonable and offers best value to the government:

The audit concern that “the Contractor did not have a sound basis for selecting and determining the responsibility of the particular subcontractor,” per FAR section 44.202-2(a)(7) is incorrect. The Center received 3 bids through advertisement in the local newspaper and through FedBizOps. The lowest bidder and incumbent from previous center operator, Behavioral Health Services (“BHS”), was selected based on their knowledge of the PRH requirements as well as their extensive experience working with at-risk youths. This, we believed, BHS provided the best value to the Government.

With regard to the OIG’s concern that the center did not obtain approval by a Job Corps Contracting Officer before awarding the sub-contract to BHS, the center presented the Consent to Place a Subcontract form to the Philadelphia Regional Job Corps Office on 8/1/10 and awaited their approval to execute a subcontract with Behavioral Health Services. As part of the center’s responsibility to provide mental health services to its student body under the prime contract, the center was required to ensure that a contract was timely executed and as such signed the subcontract with Behavioral Health Services while awaiting the signed copy of the Consent to Place a Subcontract from the Region. To protect the government as well as the company, there is a non-availability of fund clause which the subcontractor agreed to prior to executing the subcontract. This term allows termination of the subcontract in the event that government funds are no longer available to support the Subcontract *for any reason* during its term. The Regional Office signed the consent form on 11/22/10.

Furthermore, as previously explained in our Response to the Discussion Draft, although the Regional Office signature date is after the effective date of each subcontract, this is not unusual or contrary to past Job Corps practices. Indeed, such operating practices have been the norm at Job Corp Centers across the country for many years, and contractors are sometimes left to await approvals for 6 months or more. In the meantime, the JCC operators, such as Adams at Red Rock JCC, are responsible and obligated to provide these mandated and critical services to ensure that that students receive them, while awaiting the Contracting Officer’s approval. Indeed, per the Job Corps Policies and Requirements Handbook (“PRH”), Adams is required to provide to students (who enroll at the Center on a weekly basis) a certain minimum number of hours of mental health care provider time. Adams’s failure to meet the contractual requirement to timely provide mental health services would potentially subject it to a finding that costs should be disallowed. Of course, Adams, as a contractor, does not have the ability to control the

timeliness of Government Contracting Officers' responses to consent requests. In this instance, the Government had full knowledge that Adams had engaged these particular subcontractors, and not only did the Government not object, it affirmatively accepted the benefits of these services. In fact, the Contracting Officer acknowledged that she signed the consents to subcontract "after the fact," but told Red Rock operators that she informed the Auditors that the "documentation was reasonable, and the most important -- was in the interest of the STUDENTS -- they were signed." Hence, this situation clearly does not warrant disallowance of the costs of this subcontract.

Finally, the audit concern that "the Contractor did not adequately and reasonably translate prime contract technical requirements into subcontract requirements" per 44.202-2 (a)(11) is incorrect as well. The roles and responsibilities of the subcontractor were outlined in the scope of services section of the subcontract agreement which was signed by both the subcontractor and the center, and consented to by the Contracting Officer.

OIG Draft Concern: Expenditures above \$3,000 That Resulted In Questioned Costs
[Draft Audit Report pgs. 8-9]

As noted, Adams Red Rock did not comply with the FAR when awarding purchase orders to vendors for 13 of the 54 expenditures above \$3,000 tested. For 11 expenditures in our sample, the center did not evaluate the sub-contractors' ability to satisfactorily perform the contracts by developing and employing evaluation factors to assess bids and award the BPA. For the two other expenditures, the center did not properly justify sole source. The following summarizes each type of non-compliance:

- *Improper Awarding of BPA — From our sample of 54 expenditures, Adams Red Rock purchased food from US Foods under a BPA for 11 expenditures in our sample. In 2010, Adams Red Rock posted on FedBizOps a Request for Quotation for Food Services and received three bids, from US Foods, Sysco, and Keyco. Upon request by the center, the bidders submitted price quotes for various food products. The vendors were not consistent in the food products for which they quoted prices and we found no documentation in the file to support how the price quotes were used in vendor selection. Adams Red Rock entered into two separate BPAs with US Foods and Sysco. We found no documentation in the file to support the rationale for the awarding of the BPAs or to support the use of evaluation factors in the solicitation (FAR 44.202). As such, we questioned the \$97,198 spent for food under the BPAs.*
- *Inadequate sole-source justification — From our sample of 54 expenditures, Adams Red Rock sole sourced two purchases. In both instances, the center was not in compliance with the FAR requirement for fair and open competition. Specifically, the center sole sourced two purchases of dormitory curtains and comforters from the vendor Skyline Mills. Justification for the sole-source purchases was documented as the vendor being the only company able to match the curtains and comforters already in the dormitories and the price was reasonable. We found no indication in the center records, such as a price or cost analysis, supporting the price paid was the best value to the government. Adams Red Rock's justification for its sole-source purchases was not adequate*

justification for a sole-source purchase. As such, we questioned the \$20,697 paid for the comforters.

We questioned the \$117,895 in total costs for the 13 expenditures (\$97,198 + \$20,697). The \$117,895 represented 26.3 percent of the \$448,550 in expenditures tested. Based on our statistical sample, we projected that there were 22 expenditures where vendor selection did not comply with the FAR, resulting in \$196,606 in potential questioned costs.

Red Rock JCC Response: Expenditures above \$3,000 That Resulted In Questioned Costs – Improper Awarding of BPAs

As set forth in detail in the accompanying cover letter, FAR 44.202-2 governs items which a *government contracting officer* must *consider* in determining whether to give consent to subcontracts. These FAR provisions do not impose any requirements upon Adams as a prime contractor. Furthermore, as set forth above, the consent to subcontracts requirements do not apply to BPAs because BPAs 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 issued in accordance with the BPA) (See citations in accompanying cover letter.) Accordingly, FAR 44.202 imposes no requirements on Adams to support the use of evaluation factors for awarding the BPAs or the use of price quotes in vendor selection.

The OIG asserts: “*For 11 expenditures in our sample, the center did not evaluate the sub-contractors’ ability to perform the contracts by developing and employing evaluation factors to assess bids and award the BPA.*” (See Draft Audit Report pg. 8) Notwithstanding the inapplicability of the authority cited by the OIG, below we repeat from our Response to the SOF some of the activities that we undertook to ensure that our process is reasonable and offers best value to the government:

US Foods (11 transactions/checks totaling \$97,198).

- Check #1164-\$5,942
- Check #1208-\$8,429
- Check #1229-\$11,166
- Check #1279-\$16,655
- Check #1399-\$11,488

The purchase of food items for the cafeteria was part of the initial food orders within the first 60 days of the inception of the contract at the Red Rock Job Corps Center. This was an extenuating circumstance in which the company could not initially bid out the food orders and as a result, continued to use the services of the food provider that was being used by the previous contractor until a successful competition process could be put in place. We single sourced the purchase and prepared a justification which was attached to the purchase order packages during the 60 day window for all of the food purchases during that period. The food vendor was competitively

procured by prior center operator. Our process for ordering food was reasonable and offered best value to the government.

- Check #1737-\$7,685
- Check #1879-\$7,571
- Check #1994-\$7,228
- Check #2036-\$6,809
- Check #2066-\$5,773
- Check #2236-\$8,448

The audit concern that the center did not obtain three bids for food order greater than \$3,000 is inaccurate. On June 4, 2010, a solicitation for a Food Supplier to the center was posted on Fedbizops. The solicitation listed the services requested to include but not limited to the supply of dry goods, frozen food, meat and seafood to the Red Rock Job Corps Center. In response to the solicitation, the center received bids from US Food Service, Sysco Food Service as well as Keyco Distributors which had been used as the basis of placing orders with US Foods, the lowest overall bidder. As part of the procurement process, the center strongly advocates that the purchase of food supplies is predicated upon quality, service and price especially for perishable food items. Furthermore, the center periodically obtains pricing information from vendors and updates the pricing sheet to allow for the procurement based on lowest pricing.

Red Rock JCC Response: Expenditures above \$3,000 That Resulted In Questioned Costs – Inadequate Sole-Source Justification

Skyline Mills (2 transactions/checks totaling \$20,697)

- Check #3212-\$10,175 and Check #2806-\$10,522

The OIG asserts: “*For two other expenditures, the center did not properly justify sole source.*” (See Draft Audit Report pg. 8.) The OIG states that Red Rock JCC sole-sourced two purchases of dormitory comforters from the vendor Skyline Mills, and that in each instance, the JCC was not in compliance with the FAR requirement listed at subpart 6.303-2 (See Draft Audit Report, pg. 3), or FAR 44.202(a)(7) and (a)(11) (See Draft Audit Report, pg. 7, table).

First, as previously explained in our response to the Discussion Draft Report, the OIG’s citation to 6.303-2 is improper and inapplicable. FAR 6.303-1 specifies when the justification requirements in 6.303-2 apply. FAR 6.303-1 states as follows: “A *contracting officer* shall not commence negotiations for a sole source contract, commence negotiations for a contract resulting from an unsolicited proposal, or award any other contract without providing for full and open competition unless the *contracting officer*— (1) Justifies, if required in 6.302, the use of such actions in writing...” (Emphasis added.) Here again, this FAR provision prescribes requirements for contracting officers, not procurements by prime contractors. Nor is this provision flowed down to Adams through its contract with DOL. Hence, on its face, this FAR provision is inapplicable.

Second, As set forth in detail in the accompanying cover letter, FAR 44.202-2 governs items which a *government contracting officer* must consider in determining whether to give consent to

subcontracts. These FAR provisions do not impose any requirements upon Adams as a prime contractor. Accordingly, FAR 44.202 imposes no requirements on Adams to conduct price or costs analysis or to provide justification for its sole-source purchases.

Third, notwithstanding the inapplicability of all the FAR provisions cited by OIG, and as we previously mentioned in our Response to the SOF, we disagree that the procurement for curtains and comforters for the dorms were not justified. The sole source procurement was justified as indicated on the Sole Source justification form, which indicated that the curtains will be purchased from the contractor that initially decorated the dormitory so that the materials match the existing decor and exactly as the previous curtains. We could not procure the existing materials from other sources because the décors could not be replicated by another vendor. As these dormitories are newly constructed, we intended to continue to keep the initial decoration pattern that came with the dorm construction.

Finally, despite our efforts to bring this issue to the OIG's attention via our Response to the Discussion Draft, the OIG continues to ignore that Red Rock JCC obtained *advance* Government approval for this purchase. Specifically, the vendor was approved as part of the National Office Project for Dorm Construction. The interior designs were a part of the construction, and the furnishings were specifically approved by the National Office. It is illogical for the OIG to request Adams to repay the Government for costs that the appropriate Government official pre-approved.

OIG Draft Finding

[Draft Audit Report pg. 9]

Adams Red Rock Obtained Adequate Support Prior To Payments for Purchase Orders between \$3,000 and \$25,000

We examined a statistical sample of 54 purchase orders between \$3,000 and \$25,000. For all 54 purchase orders examined, Adams Red Rock obtained the required supporting documents prior to payment.

Red Rock JCC Response: N/A

OIG Draft Concern: FAR Non-Compliance Caused By Weak Control Environment

[Draft Audit Report pg. 9]

These conditions occurred because Adams Red Rock did not establish a control environment, including procedures and oversight, to ensure compliance with the FAR. Adams did conduct a Corporate Program Assessment at Adams Red Rock from February 28 - March 4, 2011. As part of the assessment, sub-contracts and blanket purchase agreements were reviewed to determine if the sub-contracts were prepared and executed in accordance with company and DOL policy; signed by authorized parties prior to performance of services; goods and services were received as stipulated in scope of work; and center goals were met as specified in its center contract.

However, the assessment team did not review the sub-contract files to determine if they were awarded in compliance with the FAR.

In addition, neither ETA contracting personnel nor Job Corps regional staff monitored Adams Red Rock's procurement activities. The Job Corps regional office did not review the procurement process at Adams Red Rock since Adams was awarded the center operator contract May 1, 2010. Adams Red Rock did submit its two 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 all FAR requirements or 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 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.

Red Rock JCC Response: FAR Non-Compliance Caused By Weak Control Environment

The Red Rock Job Corps Center was scheduled and had its first DOL assessment under the management of Adams and Associates, Inc. the week of June 6, 2011. Procurement was reviewed. The Center has not received a formal copy of the assessment to date.

Adams takes issue with the OIG's assertion that "the assessment team did not review the sub-contract files to determine if they were awarded in compliance with the FAR." Adams, to date, despite its many communications with the OIG, has not been apprised of any applicable FAR requirements with which it has failed to comply. In its Statement of Facts, the OIG did not provide any specific FAR citations. Hence, in its Response to the SOF, Adams requested the specific FAR cites that the OIG sought to apply. In response, the OIG's Discussion Draft contained a number of FAR provisions. However, as explained in our Response to the Discussion Draft, none of the those provisions applied to Adams as a prime contractor operating a Job Corps Center for the Department of Labor. Accordingly, in this latest Draft Audit Report, the OIG (without acknowledgement of its previous misapplication of FAR provisions) has largely discarded those FAR provisions it cited in the SOF. Instead, the OIG has come up with a new set of supposedly applicable FAR provisions under FAR 44.202-2. As explained herein, these provisions, which the OIG tries to impose as requirements upon Adams at this eleventh hour, are also inapplicable. Even if part 44.202-2 did impose these requirements upon Adams, which it does not, it is incongruous and inappropriate for the OIG to suggest that non-compliance with such supposed requirements is a result of a weak control environment by Adams, especially given that the OIG itself only came up with these alleged requirements in this near-final stage of the Audit process.

The remainder of this concern by OIG critiques that actions of ETA contracting personnel and Job Corps regional staff who monitored Adams Red Rock's procurement activities, as well as the activities of the Contracting Officer. Regarding the OIG's contention that the contractor must

request the Contracting Officer's consent prior to entering into specified sub-contracts, please see our response above to the individual findings regarding PCOM and BHS.