Appendix D

ETA Response to Draft Report

U.S. Department of Labor

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

SEP 29 2011

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

FROM: JANE OATES
Assistant Secretary

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

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

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

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

Response: Management accepts this recommendation in part.

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

We consider this recommendation resolved.

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

Response: Management accepts this recommendation in part.

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

Table 1: Instances of FAR non-compliance resulting in questioned costs

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

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

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

(e) We agree with the OIG, ETR did not document the justification for the sole source awards. We will initiate proceedings to reclaim the excess funds paid by the contractor while recognizing the value of the goods and services received. We anticipate that the cost recovery will be less than the $61,800 questioned by the OIG.

(f) We agree in part with the OIG, of the 4 actions cited as circumventing competitive bidding, the purchase of mattresses comparing the prices of two GSA schedule bidders to the pricing of a non GSA schedule bidder does not appear to circumvent the competitive bidding process. While ETR may purchase from the GSA schedule they are not bound to the same restrictions as Federal Contracting officials and are not compelled to only compete within the schedule. We will initiate proceedings to reclaim the excess funds claimed by the contractor. We estimate that the cost recovery will be less than the $109,669 in expenditures over $3,000.

We consider this recommendation resolved.

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

Response: Management accepts this recommendation.

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

We consider this recommendation resolved.

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

Response: Management accepts this recommendation in part.

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

We consider this recommendation resolved.

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

Response: Management accepts this recommendation in part.

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

We consider this recommendation resolved.

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

Response: Management accepts this recommendation

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

We consider this recommendation resolved.

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

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

Appendix E

ETR Response to Draft Report

Education & Training Resources

September 22, 2011

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

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

Dear Mr. Lewis:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. Concluding Observations.

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

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

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

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

Respectfully,

Brian Fox
President/CEO

Attachment(s) – 1
-Appendix

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

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

APPENDIX

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

Subcontracts Managed by ETR/Turner:

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

- The cited FAR sections on their face do not require the contractor to perform cost analysis or price analysis, state factors or subfactors, or develop a "means of rating." They do not require the contractor to do anything. They simply require the government ***contracting officer*** (not the contractor), in a procurement where government "consent" to a subcontract is required, to ***"consider"*** various questions framed in general terms, such as whether the contractor has a "sound basis" (undefined) for the subcontract award ((a)(7)) and whether the contractor has "reasonably translated" prime contract technical requirements to the subcontract ((a)(11)). The cited FAR sections do not make "consent" dependent on specific answers to the various questions for "consideration."

- The alleged requirements for the contractor to perform cost analysis and price analysis, list factors and subfactors, and develop a "means of rating" do not exist anywhere else in the FAR, or in ETR's contract with DOL. The OIG has never been able to cite or quote any of these nonexistent FAR "requirements," despite our repeated requests throughout this audit.

- The DOL contracting officer, in fact, reviewed the file for the Calhoun subcontract and formally consented in writing to its award. The consent was also signed off by two other responsible DOL personnel. There is no evidence that any of these personnel did not carefully review and consider all required factors.

- In fact, ETR's selection of Dr. Calhoun was reasonable, properly documented, and provided best value to the Job Corps. ETR advertised the subcontract procurement. It received nine (9) responses, of which three (3) were qualified to perform the required scope of work. Dr. Calhoun was the lowest-priced qualified bid. ETR's estimated budget for this position (shared with the Job Corps during the pricing of the prime contract) was $101.30/hour. This estimate was documented prior to the subcontract solicitation. The subcontract was awarded to Dr. Calhoun at 95.00/hour, substantially under the ETR/Turner's contracted budget amount, confirming the reasonableness of the price.

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

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

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

- The cited FAR sections on their face do not require the contractor to perform cost analysis or price analysis, state factors or subfactors, or develop a "means of rating." They do not require the contractor to do anything. They simply require the government *contracting officer* (not the contractor), in a procurement where government "consent" to a subcontract is required, to "*consider*" various questions framed in general terms, such as whether the contractor has a "sound basis" (undefined) for the subcontract award ((a)(7)) and whether the contractor has "reasonably translated" prime contract technical requirements to the subcontract ((a)(11)). The cited FAR sections do not make "consent" dependent on specific answers to the various questions for "consideration."

- The alleged requirements for the contractor to perform cost analysis and price analysis, list factors and subfactors, and develop a "means of rating" do not exist anywhere else in the FAR, or in ETR's contract with DOL. The OIG has never been able to cite or quote any of these nonexistent FAR "requirements," despite our repeated requests throughout this audit.

- The DOL contracting officer, in fact, reviewed the file for the Renaissance Center subcontract and formally consented in writing to its award. The consent was also signed off by two other responsible government personnel. There is no evidence that any of these personnel did not carefully review and consider all required factors.

- In fact, ETR's selection of Renaissance Centre was reasonable, properly documented, and provided best value to the Job Corps. ETR advertised the subcontract procurement. It received ten (10) bids, of which two (2) were qualified to perform the required scope of work. Renaissance Centre was the lowest priced qualified bidder. ETR/Turner's estimated budget for this requirement (DOL approved during the pricing of the prime contract) was $45.69/hour. This estimate was documented prior to the subcontract solicitation. The subcontract was awarded to Renaissance Centre at $45.00/hour, confirming the reasonableness of the price.

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

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

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

- The cited FAR sections on their face do not require the contractor to perform cost analysis or price analysis, state factors or subfactors, or develop a "means of rating." They do not require the contractor to do anything. They simply require the government *contracting officer* (not the contractor), in a procurement where government "consent" to a subcontract is required, to "*consider*" various questions framed in general terms, such as whether the contractor has a "sound basis" (undefined) for the subcontract award ((a)(7)) and whether the contractor has "reasonably translated" prime contract technical requirements to the subcontract ((a)(11)). The cited FAR sections do not make "consent" dependent on specific answers to the various questions for "consideration."

- The alleged requirements for the contractor to perform cost analysis and price analysis, list factors and subfactors, and develop a "means of rating" do not exist anywhere else in the FAR, or in ETR's contract with DOL. The OIG has never been able to cite or quote any of these nonexistent FAR "requirements," despite our repeated requests throughout this audit.

- The DOL contracting officer, in fact, reviewed the file for the Dawkins subcontract and formally consented in writing to its award. The consent was also signed off by two other responsible government personnel. There is no evidence that any of these personnel did not carefully review and consider all required factors.

- In fact, ETR's selection of Mr. Dawkins was reasonable, properly documented, and provided best value to the Job Corps. ETR advertised the subcontract procurement. It received five (5) responses, of which two (2) were qualified to perform the required scope of work. Mr. Dawkins was the lowest priced qualified bidder. ETR's estimated budget for this requirement (DOL approved during the pricing of the prime contract) was $30.00/hour. This estimate was documented prior to the subcontract solicitation. The subcontract was awarded

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

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

BPAs Managed by ETR:

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

- The cited FAR sections (44.202-2(a) (7) and (11)) on their face do not require the contractor to "advertise," or to "develop and state factors or subfactors," or to develop a "means of rating" bids. They do not require the contractor to do anything. They simply require the government contracting officer (not the contractor), in a case where government "consent" to a subcontract is required (and it is *not* required in the case of a BPA), to "consider" various questions framed in general terms, such as whether the contractor has a "sound basis" (undefined) for the subcontract award ((a)(7)), or whether the contractor has "reasonably translated" prime contract technical requirements to the subcontract ((a)(11)). The cited FAR sections do not make the government's "consent" dependent on specific answers to the various questions listed for "consideration."

- The alleged requirements for the contractor to advertise, to develop and state factors or subfactors, or to develop a "means of rating," do not exist anywhere else in the FAR, or in ETR's contract with DOL. The OIG has never been able to cite or quote any of these nonexistent alleged "requirements," despite our repeated requests throughout this audit.

- Even if "considerations" for "consent" by the contracting officer equaled a "requirement" on the contractor, which they do not, there is no requirement that the government consent to a BPA in the first place, hence FAR Subpart 44.2 is totally inapplicable to this transaction. A BPA is not a contract in the first place, and hence not a subcontract. It is just an agreement specifying provisions that will apply to future potential contracts (purchase orders, and so on)

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

- The OIG provides no evidence for its false "suggestion" that the consultant had a "potential conflict of interest" with Staples. The only rationale given by the OIG is that Staples is one of the consultant's "premier vendors." This is not evidence of a "potential conflict of interest," not even a "suggested" potential conflict. On its face, it simply shows that Staples has a successful record of past performance with the consultant, *i.e.*, an obvious factor supporting the selection of Staples for this BPA.

- In fact, the selection of Staples was reasonable, properly documented, and provides best value to the Job Corps. Staples was the low bidder. Contrary to the OIG's finding, "evaluation factors" were in fact expressly listed in the solicitation: "service, past history, pricing, commitment of company and representative, cost, and solutions." The selection process was highly competitive: 14 bidders were solicited and 5 submitted bids. The BPA protects ETR and the Job Corps by reserving ETR the freedom to cease purchasing from Staples if its products or prices cease to be competitive. The reasonableness of the selection of Staples has been confirmed by the auditors having identified zero unallowable or unreasonable office supply costs in this audit.

- The OIG questions all of the costs ultimately charged for office supplies ($10,803.00 as of the audit date) pursuant to the Staples BPA. But the OIG also correctly recognizes that any disallowance must take into account the value of goods and services received by the Job Corp, so as not to award the government a windfall of free goods and services on account of an procedural noncompliance. See Draft Audit Report at page 2, footnote 1.

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

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

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

- The alleged requirements for the contractor to advertise, to perform cost or price analysis, to develop factors, subfactors, and a "means of rating" for a BPA such as this do not exist anywhere else in the FAR, or in ETR's contract with DOL. The OIG has never been able to cite or quote any of these nonexistent alleged FAR "requirements," despite our repeated requests throughout this audit.

- Even if "considerations" for "consent" by the contracting officer equaled a "requirement" on the contractor, which they do not, there is no requirement that the government consent to a BPA in the first place, hence FAR Subpar 44.2 is totally inapplicable to this transaction. A BPA is not a contract in the first place, and hence not a subcontract. It is just an agreement specifying provisions that will apply to future potential subcontracts (purchase orders, and so on) if there are any in the future. See discussion and authorities cited in our cover letter. Hence, even when understood as questions for the contracting officer's "consideration," FAR 44.202-2(a)(7) and (11) are inapplicable here.

- The OIG provides no evidence for its false "suggestion" that the consultant had a "potential conflict of interest" with A-Z Solutions. The only rationale given by the OIG is that A-Z Solutions is a "premier vendor" and "Vendor Sourcing Partner" of the consultant. Without more, and we are aware of nothing, this is not evidence of even a "suggested … potential conflict of interest"; it is simply evidence of A-Z Solutions' credentials based on successful past performance, *i.e.,* obvious factors in A-Z Solutions' favor.

- In fact, the selection of A-Z Solutions was reasonable, properly documented, and provides best value to the Job Corps. The selection process was highly competitive: 17 bidders were solicited, and 10 submitted bids. Contrary to the OIG's contention, "evaluation factors" were expressly listed in the solicitation: "service, past history, pricing, commitment of company and representative, cost, and solutions." A-Z Solutions was the second-lowest bidder but was judged to provide the best value, all factors considered. A-Z's pricing was within reasonable range of the low bidder's pricing, and A-Z is a Service Disabled Veteran Owned Small Business. There is no FAR requirement to select the lowest bidder for this BPA. The terms of the BPA protect ETR and the Job Corps by reserving ETR the freedom to cease ordering from A-Z if its products or prices cease to be competitive. The reasonableness of the selection of A-Z has been confirmed by the fact that the auditors found no unreasonable or unallowable janitorial supply costs billed in this audit.

- The OIG questions all of the costs ultimately charged for janitorial supplies (none as of the audit date). But the OIG also correctly recognizes that any disallowance must take into account the value of goods and services received by the Job Corps, so as not to award the government a windfall of free goods and services on account of a procedural noncompliance. See Draft Audit Report at page 2, footnote 1.

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

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

- The cited FAR sections (44.202-2(a)(7) and (11)) do not require the contractor to state "factors," to advertise, or to obtain or evaluate price information. They do not require the contractor to do anything. They simply require the government contracting officer (not the contractor), in a case where government "consent" to a subcontract is required (and it is *not* required in the case of a BPA), to "consider" various questions framed in general terms, such as whether the contractor has a "sound basis" (undefined) for a subcontract award ((a)(7)), or whether the contractor has "reasonably translated" the prime contract technical requirements to the subcontract ((a)(11)). The cited FAR sections do not make the government's "consent" dependent on any specific answers to the various questions listed for "consideration."

- The alleged requirements for the contractor to state factors, to advertise, to develop a means of rating, and to obtain and evaluate price information, do not exist anywhere else in the FAR, or in ETR's contract with DOL. The OIG has never been able to cite or quote any of these nonexistent alleged FAR "requirements," despite our repeated requests throughout this audit.

- Even if the "considerations" for "consent" equaled a "requirement" on the contractor, which they do not, there is no requirement that the government consent to a BPA in the first place, hence FAR Subpart 44.2 is totally inapplicable here. A BPA is not a contract in the first place, and hence not a subcontract. It is just an agreement specifying provisions that would apply to potential future contracts (purchase orders, and so on) if there are any in the future. See discussion and authorities cited in our cover letter. Hence, even when understood as questions for the contracting officer's "consideration," FAR 44.202-2(a)(7) and (11) are inapplicable here.

- The OIG provides no evidence for its false allegation of a "conflict of interest." "Providing classes and seminars to ETR Turner students as part of the center's culinary arts program," whatever the OIG specifically has in mind and whether true or not, on its face has nothing to do with a "conflict of interest." It is the only rationale offered by the OIG for its allegation.

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- In any event, the selection of Glover, Sysco-Gulf Coast, and ACC was reasonable, properly documented, and provides best value to the Job Corps. Contrary to the OIG allegation that the opportunity was not advertised, advertising was in fact placed in the local newspaper, the Albany Herald, and five (5) bids were received in response. The auditors were provided with proof of this advertisement. Contrary to the OIG's allegation that price information was not obtained or evaluated, the Center sent the prospective bidders an extensive food inventory spreadsheet listing all expected food purchase items based on past purchasing history, and the bidders electronically responded, filling in the prices for the line items they were offering to supply. Based on this input, Center personnel created a consolidated spreadsheet reflecting the best prices for each listed item. The auditors were provided with this documentation. The consolidated spreadsheet provided the basis for the BPA pricing for all three selected vendors. The OIG has not identified any unreasonable pricing for any food items for any of the BPA vendors.

- As elsewhere, the OIG questions all of the costs billed under these BPAs, thus potentially awarding the government a massive windfall of free food on the basis of alleged procedural shortcomings. The Draft Audit report correctly observes that the actual amount disallowed, if any, must take into account the value of subcontracted goods and services received and enjoyed by the government notwithstanding any procedural issue relating to the award process. Draft Audit Report at page 2, footnote 1.

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

- Again, FAR 44.202-2(a)(7) and (11) on their face say nothing about the alleged noncompliances: nothing about "splitting" purchase orders, nothing about a $3,000.00 threshold, and as explained above, nothing at all about any requirements for the contractor, as opposed to general questions for the contracting officer to "consider" in the event that government "consent" to a subcontract is required. Nor are there any such requirements on the ETR anywhere else in the FAR or in ETR's contract with DOL. We have repeatedly asked the OIG to cite and quote them if there are any, and none has been found.

- Even in terms of "considerations" for government consent, there is no requirement for the government to consent to any of these subcontracts in the first place. Government consent to subcontracts in the case of a contractor that does not have an approved purchasing system (ETR's current status) is required only for: cost-reimbursement sub contracts, time-and-materials subcontracts, labor-hour subcontracts, and fixed-price subcontracts whose value is less than the "simplified acquisition threshold" ($150,000) and 5% of the prime contract value (approximately $2 million in this case). See FAR 44.201-1(b); FAR 52.244-2(d).

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

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

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

- FAR 44.202-2(a)(7) and (11) impose no such requirements on the contractor. They simply state that the contracting officer (not the contractor), in a case where government consent to a subcontract is required (not the case here), must "consider the general questions of whether there is a "sound basis" (undefined) for the award ((a)(7)) and whether the prime contract requirements have been "reasonably translated" to the subcontract ((a)(11). Nor are there any such requirements anywhere else in the FAR or in ETR's contract with DOL. The OIG has never identified any, despite our repeated requests throughout this audit.

- Even as a matter of "considerations" for the contracting officer to ask about in a case where "consent to subcontract" is required, there is no requirement for the contracting officer to consent to these HSD subcontracts in the first place. Consent is only required if the subcontract is cost-reimbursement, time-and-materials, labor-hour, or fixed price under the "simplified acquisition threshold" ($150,000) or 5% of the prime contract price (approximately $2 million here). None of these criteria are met here. The Penn Foster and New Learning subcontracts are priced in terms of fixed prices for specific services, all of which are under $150,000. Hence, FAR Subpart 44.2 is entirely inapplicable here.

- The selection of Penn Foster and New Learning was reasonable and provided best value to the government, as fully explained and documented in earlier stages of this audit. This is not, in fact, a "sole source" procurement in the sense of only one vendor being used. As is evident, ETR selected two HSD vendors, not a sole source. Each provides value to the Job Corps because they offer different HSD programs suitable to different types of credentials that particular Turner JCC students are expected to possess. Hence, the need for two HSD

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

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

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

- The allegation regarding use of "data submitted by the vendors for prior unrelated work" is a new one, not made in previous drafts that the OIG has shared with us. The reference to "$34,960" appears to pertain to subcontracts with David Painting (check # 130990) and the reference to "$9,120" apparently pertains to a subcontract with Carpets of Albany (check # 130476). ETR denies pricing these purchases based on data from "unrelated work" and we are not even sure what the allegation means. The OIG presents no evidence for this claim and we are aware of none. The contracts were priced based on bids from the vendors specific to the goods and services procured, not "unrelated work." Our purchasing files, reviewed by the auditors, confirm this.

- With respect to the allegation that ETR "obtained one bid and compared it to prices listed on the internet by two other vendors" for a "$9,777 purchase of trash cans," this apparently pertains to a subcontract with Barco Products (check # 131226). It is not clear what the nature of the alleged impropriety here is. No FAR or contractual provision is cited (despite our requests to the OIG) that would prohibit a contractor from using internet pricing sources to confirm the reasonableness of a vendor quotes, and there is no such prohibition. On its face, the practice is a reasonable technique for checking price reasonableness. Note that the

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

- With respect to the allegation concerning procurement of $55,812 worth of dormitory mattresses (apparently from Lasting Impressions, check # 129573), the OIG again does not explain what is improper or noncompliant. There is no FAR or contractual provision that prohibits a contractor from considering bids from multiple sources including vendors on GSA lists and those not on such lists. The OIG has never provided a FAR or contractual basis for the alleged "requirement," despite our repeated requests. On its face, common sense suggests that a contractor should not be prevented, and the Job Corps would benefit, from consideration of good qualified vendors, from whatever list. Again, the evaluation of multiple quotes, acknowledged in the allegation itself, contradicts the OIG's simultaneous allegation that competition was "circumvented."

- There is no allegation or finding that any of these purchases resulted in quality or value that was unsatisfactory for the Job Corps mission in any way. Yet, the entirety of the subcontracted costs for these transactions is questioned on the basis of the alleged, unexplained, unsubstantiated procedural irregularities. As the Draft Audit recognizes (page 2, footnote 1), any final determination must take into account the actual value of the goods and services enjoyed by the Job Corps, which is undisputed.

Multiplication of Questioned Costs Based on "Statistical Sample."

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

Alleged "Weak Control Environment."

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

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

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

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

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

- ETR's first DOL CPSR Review was initiated on February 4-8, 2008 at the ETR Corporate Office and on February 26-28, 2008 at the Iroquois Job Corps Center.

- This DOL CPSR Review was performed by then National Office of Job Corps Support Contractor, Exceed Corporation. Following this initial review, ETR's USDOL/OASAM Contracting Officer issued a normally required corrective action plan as part of the review and approval process. On August 20, 2008, ETR submitted the requested CPSR related corrective action plan to its USDOL/OASAM Contracting Officer. On September 25, 2008, ETR's corrective action plan was approved by its USDOL/OASAM Contracting Officer.

- On March 12, 2009, ETR was notified that EBSI, LLC had been commissioned on Job Corps' behalf to conduct the CPSR Re-Assessment, with the explanation that EBSI, LLC was the new National Office of Job Corps Support Contractor for CPSR Reviews; thus, replacing the Exceed Corporation. This EBSI conducted CPSR Re-Assessment took place on April 28-30, 2009 at the Turner Job Corps Center.

- On September 22, 2009, based on the EBSI conducted Re-Assessment, ETR's USDOL/OASAM Contracting Officer issued a second request for a corrective action plan. Upon reviewing the basis for this additional corrective action plan; particularly since ETR had previously received DOL approval for its earlier plan on September 25, 2008, ETR determined there were conflicting findings between the initial CPSR Review conducted by Exceed and the CPSR Re-Assessment Review conducted by EBSI, LLC. On October 12, 2009, ETR sent official correspondence to its USDOL/OASAM Contracting Officer

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

- On June 10, 2011, ETR was notified by USDOL/ETA/OCM Administrator that a new CPSR Review would be conducted on ETR during the period of August 8-12, 2011 at the ETR Corporate Office and on August 22-26, 2011 at the Hartford Job Corps Academy. ETR was advised by the USDOL/ETA/OCM representative that all prior CPSR Review activities conducted by Exceed Corporation and EBSI, LLC were considered incomplete, null and voided.

- At the time of this response, ETR's only complete CPSR Review is currently on-going and has not been finalized by USDOL/ETA/OCM.

(End of ETR Response)

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