



September 28, 2012

Joseph A. Main
Assistant Secretary
for Mine Safety and Health
1100 Wilson Blvd.
Arlington, VA 22209

Interim Report: MSHA Needs to Strengthen Planning and Procurement for
Metal and Nonmetal Mine Rescue Contests
Report No. 05-12-004-06-001

Dear Assistant Secretary Main:

We received three complaints regarding the Mine Safety and Health Administration's (MSHA) Metal and Nonmetal Mine Rescue Training Contests (Contests). The complaints alleged MSHA wasted hundreds of thousands of dollars by sending employees to Reno, NV, for the Contests and further alleged MSHA's managers were upgraded to deluxe suites and provided complimentary cocktail parties, limousine rides, clothing, and other items.

MSHA held its five most recent Contests in Reno, NV, and had planned to hold the 2012 contest there. Since MSHA is primarily responsible for mine rescue standards and procedures, it organizes and hosts the Contest, makes the rules, provides judges, and charges entry fees to participants and vendors for the Contests.

Given the seriousness of the allegations and the recent congressional and media interest surrounding the General Services Administration's (GSA) conference in Las Vegas, we began an audit to investigate the validity of the complaints.

Interim Results and Findings

Although our audit of the 2012 Contest plans continues, we have found MSHA did not:

- 1) follow proper approval and contracting procedures,
- 2) document its fee structure methodology, or
- 3) fully account for contest fees and costs.

Two common threads ran through these findings: (1) MSHA did not work with its procurement staff from the outset, and (2) MSHA could not provide clarity regarding who actually organized the Contests. Although MSHA chose the venues and contracted

for space, it could not detail how it calculated the entry fees it charged participants. In addition, it passed these fees directly to the hotel instead of depositing them into a custodial account and using them to cover Contest costs. Moreover, MSHA did not have a structure in place to account for the fees after they were received by the hotel or to account for the costs related to those fees.

MSHA Did Not Follow Proper Approval and Contracting Procedures

MSHA did not comply with an October 12, 2011, memorandum from the Deputy Secretary that requires written approval of all conference-related activities and expenses prior to commitment of any funds. We found that MSHA entered into a contract with the Reno-Sparks Convention and Visitors Authority (RSCVA) on November 30, 2011. The OIG has also obtained a copy of a contract between MSHA and the Peppermill Hotel in Reno, NV, dated October 25, 2011. However, there is a question regarding the validity of the MSHA signature on this contract. If this contract is determined to be valid and enforceable, MSHA may have exposed itself to liability by using the hotel's standard contract, which included an impermissible indemnification clause stating that MSHA would indemnify and hold the hotel harmless against all losses and liabilities. Such a clause is impermissible because it would violate the Antideficiency Act by agreeing to an unlimited and indefinite liability. The OIG is continuing to review the circumstances surrounding the negotiation and execution of this contract.

Further, MSHA did not submit the required decision memorandum seeking approval of the 2012 Contest until April 11, 2012, which was more than 5 months after executing its first contract. The decision memorandum disclosed MSHA's contracts with the RSCVA and the Peppermill Hotel, as well as MSHA's efforts to reduce costs by reducing the number of employees attending the 2012 Contest from 117 for the 2010 Contest to 62. However, MSHA failed to disclose in this same narrative its plan to utilize 430 hotel rooms, 30 more than 2010. Because MSHA had not complied with the Deputy Secretary's directive, it committed the federal government to significant potential costs before its plans had been properly vetted and approved.

MSHA Did Not Document Its Fee Structure Methodology

MSHA invited teams and vendors to register for the 2012 Contest by completing registration forms and paying entry fees of \$750 per team and \$1,000 per vendor. Office of Management and Budget Circular A-25 requires the Government to recover the cost of its services in certain cases. MSHA could have incorporated the costs of organizing and supporting the Contest into its fee calculations; however, the way MSHA calculated the fees is unclear.

MSHA Did Not Fully Account For Contest Fees And Costs

MSHA asked teams and vendors to pay entry fees by check or money order made payable to the Peppermill Hotel. MSHA would then collect the payments and pass them

to the hotel. MSHA expected the hotel to credit an event account and use the funds to pay for a vendors' reception and an awards banquet. Because MSHA did not plan to receive or approve a list of expected costs, it is unclear what costs were to be incurred and what the fees were meant to cover. As the Contest organizer, MSHA accepted a duty to ensure that costs and fees were appropriate, that the hotel properly accounted for all event funds, and that Contest funds were not used for unallowable or inappropriate expenditures.

Conclusions

These issues occurred because MSHA did not solicit the assistance of its procurement function early enough in the planning process for the 2012 Contest. Additionally, MSHA did not retain the entry fees, apply them to costs, or appropriately account for the use of funds. Addressing these issues will help ensure that MSHA plans its Contests consistent with the Department's goal of reducing conference costs, protects itself from potential liability, appropriately determines expected costs, and accurately accounts for Contest funds.

The preliminary results discussed in this interim report are based on our work to date related to the planned 2012 Contest. Audit fieldwork covering the Contests MSHA held in 2006, 2008, and 2010, as well as the 2012 Contest, continues and we will report separately when that work is completed. Please note that there may be additional findings related to the planned 2012 Contest.

Recommendations

We recommend the Assistant Secretary for Mine Safety and Health: (1) design and implement controls to ensure all conferences are properly planned and no commitment of resources is made prior to approval by required officials; (2) partner with its procurement team from the outset to ensure contracts contain all appropriate clauses and exclude impermissible clauses; (3) determine Contest fees and properly match fee amounts to expected costs to the Government; (4) review and approve all expected costs before they are incurred; and (5) account for all funds, whether derived from Contest fees or MSHA funds, expended in connection with Contests.

Agency Response

In response to the draft interim report, the Assistant Secretary of Labor for MSHA did not disagree with any of the recommendations. He stated that MSHA has already imposed greater internal funds controls and procedural improvements in connection with planning, approvals, contracting, and disbursement procedures so as to address identified shortcomings and to comply with all applicable laws and procedures. This will include assuring that MSHA adheres to the Department's conference approval policy.

Please see the attachment for MSHA's full response.

Interim Report: MSHA's Mine Rescue Contests

We appreciate the cooperation and courtesy MSHA has provided us during this audit.



Elliot P. Lewis
Assistant Inspector General
for Audit

Attachment

U.S. Department of Labor

Mine Safety and Health Administration
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SEP 27 2012

MEMORANDUM FOR ELLIOT P. LEWIS
Assistant Inspector General for Audit

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

SUBJECT: Response to Draft Interim Report: MSHA Needs to Strengthen
Planning and Procurement for Metal and Nonmetal Mine
Rescue Training Contests

Thank you for providing the draft interim report on the audit of the 2012 Mine Rescue Training contest. Prior to becoming aware of the audit, I directed that planning for the 2012 training contest be halted so that the event could be approved, planned and conducted in accordance with applicable government rules and policies. After you notified the Mine Safety and Health Administration (MSHA) of the audit, I requested that your office issue an interim report to assist MSHA in determining what steps it should take to ensure compliance with applicable rules as it moves forward with mine rescue training contests, a critical component of mine emergency operations preparedness. Based upon MSHA's review, I determined that we would not move forward with the metal and nonmetal national training contest until all issues are resolved. MSHA notified stakeholders of the decision on June 29, 2012. Because of MSHA's commitment to conduct this important and necessary training activity in accordance with law and policies, the event has been postponed until 2013.

I want to provide some context on the purpose and value of these training contests. These mine rescue training activities help prepare rescue teams for mine emergencies. The teams are made up of volunteers who engage in what likely is the most difficult and dangerous emergency response undertaken by rescue workers in the country. At times they are called upon to travel miles into underground mines following mine fires, explosions, roof falls, inundations, or other events to rescue trapped or missing miners. These team members both need and deserve the best training we have to offer to prepare them for this dangerous work. The federal government has been directly involved in the planning of these events for about 100 years, and some of the practices related to the planning of mine rescue events have been in place without any systematic examination for decades.

MSHA has already imposed greater internal funds controls and procedural improvements in connection with planning, approvals, contracting, and disbursement procedures so as to address identified shortcomings and to comply with all applicable laws and policies. This includes assuring MSHA adheres to the Department's

conference approval policy. We intend to continue our review process. We also plan to work closely with mine rescue stakeholders as we move forward.

As a factual matter, we disagree with the OIG's statement in the interim report that "MSHA failed to disclose its plan to utilize 430 hotel rooms." The approval package, which included a copy of the hotel's form contract, was sent to the Department on April 27. The form contract contained the provision which guaranteed 430 rooms to be used for all conference participants. We noted in that submission that "we are working with the Office of the Solicitor as we plan to negotiate a new contract, which will not include questionable clauses such as room upgrades and a guarantee of rooms for non-MSHA personnel."

We look forward to your ongoing efforts to assist MSHA. We will use your preliminary audit findings, and our own review observations, to improve the planning and execution of future MSHA training contests. If you have any questions concerning this response, please contact me.