Appendix D

OASAM Response to Draft Report

U.S. Department of Labor

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

MAR 20 2012

MEMORANDUM FOR ELLIOT P. LEWIS
Assistant Inspector General for Audit

FROM: EDWARD HUGLER
Deputy Assistant Secretary for Operations

SUBJECT: Management's Response to the Office of Inspector General Draft Report entitled: Department Oversight Needs to Be Strengthened Reduce Procurement Risk, Report No. 17-11-003-07-711

This responds to the above-described draft report, dated February 13, 2012. The revised stated objective of the audit was to determine to what extent did DOL ensure that contracts were awarded based on the best value to the government and contract modifications were issued within the terms of the initial contracts.

At the outset, management acknowledges that any process can be improved and we will take appropriate action to update the Department-wide policies and procedures to address the findings outlined in the draft report. Management also acknowledges that the draft report incorporates a number of our earlier comments intended to improve accuracy, including clarifying that during the audit—

- The Office of Inspector General (OIG) found no DOL contracts that were improperly awarded;
- The Department had not awarded contracts or modifications to suspended or debarred contractors;
- That no contract funding was spent inappropriately; and
- The OIG did not assess the reasonableness of costs associated with contracts that were reviewed as part of the audit and, thus, did not find the costs of any of the contracts reviewed were unreasonable.

These clarifications are important to distinguish the audit findings in this report from incidents of procurement abuse or improperly awarded contracts—of which there is no evidence in this audit report.

As we discussed during the exit briefing, it is reasonable to anticipate that the readership of OIG audit reports often lack subject-matter expertise, including the complexities of government contracting. As such, to present a balanced report and not mislead the consumers of the audit report, all due diligence should be taken to present the information in a way that does not allow the uninitiated reader to get the impression of far greater risk or gravity than the facts actually warrant. Our responses below are intended to address this issue in two respects: In Section A of our reply we address the larger context of the Department's procurement structure so that the reader of the report has an appreciation for where in this structure the contract awards and modifications were handled. Section B addresses management's growing concern with the OIG's extrapolation of small sample results - in this case to suggest that more than $17 million in

procurement funds could have been used more efficiently. As discussed further below, we think this is misleading, leaving the public with an impression that millions of dollars were misspent when in fact there is no direct evidence that this has occurred. We also address concerns about the logical construct of this audit and others like it. In Section C, we address management's concern that the original objective of the audit changed after the audit was completed, and in Section D we provide specific responses to the draft report's findings.

A. DOL Procurement Structure

Within DOL, acquisition authority is decentralized among the Office of the Assistant Secretary for Administration and Management (OASAM), the Employment and Training Administration (ETA), the Bureau of Labor Statistics (BLS), and the Mine Safety and Health Administration (MSHA). Secretary's Order 2-2009 provides that the Assistant Secretary for Administration and Management is the Department's Chief Acquisition Officer (CAO) and, with the exception of those involving the Office of Inspector General, is responsible for providing oversight for all DOL procurement activities, including delegating contracting officers the authority to procure goods and services. OASAM's Office of Procurement Services (OASAM-OPS) procures goods and services for all DOL agencies with the exception of MSHA; BLS; Job Corps' center operations, outreach and placement, and architectural and engineering services; and the OIG.[1]

B. Statistical Extrapolation from Small Samples and Flawed Logical Construct

The audit, based on three small sample sets, reports that "*...OIG estimated that DOL could have used $17.5 million in FY2010 funds more efficiently...*" In management's view this is grossly misleading to the readers of this report, when in fact there is no direct evidence that any funds were misspent.

In addition to being a misleading technique in reporting audit results, management has serious concerns about the validity of the methods employed to reach the report's conclusions. If a statistical analysis is to form the basis for audit conclusions or recommendations, much greater rigor is required. As presented, the report raises serious questions about whether the appropriate universe, sampling approach, and statistical assumptions were made in formulating the projections.

To illustrate some of these deficiencies:

- The auditors do not explain why they selected the universe of contracts for examination (for example, why were BPA and task order actions not included?);
- The auditors used an idiosyncratic approach to taking a sample of that universe, did not present summary statistics on whether the sample reflected the base characteristics of the selected universe, and inappropriately extrapolated sample data to a universe to form the basis for potentially inaccurate conclusions. Although the auditors use randomization to select cases from their defined universe - which is apparently intended to minimize potential selection bias – no explanation is given for why the OIG selected the number of cases that

[1] Appendix A (Background) of the revised draft report states that "until recently, OPS served BLS above certain dollar thresholds and all ETA information technology procurements." This statement is incorrect. OPS also continues to procure all information technology goods and services for ETA.

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they did. Without the OIG explaining why they selected the number of cases from their defined universe of actions, it is impossible to determine whether the OIG used an appropriate sampling ratio, or if the sample used was statistically valid.

- The auditors use an expected error rate of 16 percent, with no explanation as to why.
- There is no indication of whether sensitivity testing was used to see how the results would change based upon different assumptions in the model.
- The auditors present the 95 percent confidence interval as a mid-point estimate and should have presented it as a range.

In sum, the audit report relies on insufficient analysis, resulting in misleading claims. In the future, OASAM would be willing to work with the OIG and the Department's Chief Evaluation Officer (CEO) to help develop statistically valid samples for audits that the OIG might be interested in undertaking. The CEO is well versed in statistical analysis and works here in the Department.

The audit report also suffers from weak construct validity—whether or not legitimate inferences can be made based on the measures selected for the audit and the concepts to be measured. In this case, the audit objective is stated as: "To what extent did DOL ensure that contracts were awarded based on the best value to the government and contract modifications were issued within the terms of initial contracts?" Instead of identifying *actual instances* of contract awards that are not the "best value" to the government and *actual instances* in which contract modifications were issued that were not "within the terms of initial contracts", the auditors chose to use the absence of documentation of internal controls as proxy measures.

As justification for using the absence of documentation as proxy measures, the OIG argues on page 28 of the draft audit report that "...internal controls provide reasonable assurance regarding the prevention of or prompt detection of unauthorized procurements. . . ." This is true. However, none of the findings involving the absence of documentation conclude, for example, that a contract was improperly awarded, or that a suspended/debarred contractor received an award, or that the auditors found contract pricing to be unreasonable.[2]

This is not to suggest that internal controls are unimportant, nor is it to suggest that internal controls should not be the focus of audits. However, audits of internal controls should be the stated objective of the audit, which they were not in this case. Nevertheless, management will take corrective action to ensure that documentation that should be in contract files is present.

C. The Objective of the Audit Was Revised After the Audit Was Completed

The initial draft report issued on September 23, 2011, included an objective to determine "...to what extent did the Department ensure procurement practices were consistent across DOL...." Management was also informed of this objective during the audit entrance conference. However, this objective was dropped from the current draft report, apparently because management was able to demonstrate that DOL has standard procurement methods and procedures in place. Inasmuch as generally accepted government auditing standards used for this audit indicate that audit objectives should be established prior to beginning the audit field work,

[2] In fact, footnote 9 states the "OIG did not assess whether or not the costs associated with these contracts were unreasonable."

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we think the original objective should be retained and the report acknowledge that the Department has procurement methods and procedures in place to ensure component agencies awarded contracts and issued contract modifications properly Department-wide.

D. Management's Response to the Revised Draft Report's Audit Findings

Finding 1*—DOL could not demonstrate that it funded FY 2010 procurements based on best value or within the scope and terms of initial contracts.*

The premise of this finding is misleading and based on the auditors' disagreement with the price determination documentation contained in the contract files. This finding is not based on direct evidence that supports the finding as presented. For example, the finding implies that DOL contract awards were not the best value to the government, even though the revised draft report implicitly acknowledges that: a) no DOL contracts that were improperly awarded; and, b) specifically acknowledges at footnote 9 on page 5 that the OIG did not assess whether or not the costs associated with the contracts were unreasonable.

In addition, the report's analysis in support of the finding is misleading or in error as further discussed below:

Best Value Award Justifications.

Page 5 of the revised draft report states that 67 contracts were reviewed and a total of 4 out of the 67—approximately 5 percent of the sample size—did not demonstrate that the contracts were awarded based on best value. The chart on page 5 of the revised draft report states that BLS Contract # DOLJ102J104059 did not justify award to the contractor selected (see Table 1 on page 5). With regard to the BLS contract, the issue at hand is unrelated to the concept of "best value." As a matter of substance, the award was proper. The deficiency is one of inadequate documentation. The justification mistakenly pertained to the product manufacturer rather than the product reseller. Although both the product manufacturer and the product reseller are legitimate sole sources, this was not properly documented to the standard set by the Federal Acquisition Regulation (FAR) at the time of award. BLS officials furnished the auditors with direct evidence to explain the manufacturer/reseller relationship; however, this is not reflected in the report. In any case, management will take corrective action to ensure to ensure that documentation that should be in contract files is present.

Price Reasonableness. Page 5 of the revised draft report also identifies three contracts lacking sufficient evidence of adequate price reasonableness determinations to support three awarded contracts; however, the report acknowledges in a footnote that the auditors did not assess whether or not the costs associated with those contracts was actually reasonable. OASAM contract file DOLJ109630254 did not have the required price determination document. However, all the other files listed did have the appropriate documentation. Although the auditors may not agree with the contracting officers' price reasonableness determinations, it is misleading to imply that price reasonableness determinations did not exist for all four contracts listed. Making price reasonableness determinations involves some subjective analysis based on various factors and that information will vary depending on the circumstances. Taking into consideration that only one out of the 67 contracts was actually missing a price determination document (even though the auditor disagrees with its rationale), the percentage of files

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containing determinations is actually approximately 99 percent. Finally, as noted elsewhere in this response, the absence of a price determination document in one file does not provide proof that the price was in fact unreasonable.

The analysis in support of this finding also suffers from technical flaws. For example, page 5 of the revised audit report cites as the basis for its conclusion provisions of FAR Parts 14 and 15. The contracts at issue were awarded under FAR Parts 12 and 13. Therefore, the reasoning used for the report's conclusion with regard to the finding is in error. FAR Part 14 is Sealed Bidding and FAR Part 15 is Contracting by Negotiation, neither of which are applicable to the four awards reviewed. In any case, management will take corrective action to ensure to ensure that documentation that should be in contract files is present.

Based on the forgoing, management disagrees with the report's conclusions finding fault with the price reasonableness of the contracts audited.

Within the Scope of the Initial Contract Concerns, Price Reasonableness Determination, Clarity of Statements of Work. Pages 6 and 7 of the revised draft report (first bullet) state that the statement of work for OASAM Contract# DOLJ079526604, Modification 12 did not contain a clear description of work, the file did not contain evidence of a price reasonableness determination, and that the purpose of some of the line items in the Price/Cost Schedule was not clear. In addition, this contract modification was listed on page 6 as being outside the scope of the initial contract. The auditor's conclusion that the statement of work for Modification 12 was unclear does not make it so for the intended audience. Some statements of work can be very complex and highly technical. The program office prepared the statement of work, and it was later reviewed by the contracting officer and found to be sufficient. Notably, under the FAR contractors can submit questions and request clarification regarding portions of the statement of work that are unclear to them. In this case, the contractor did not ask for clarifications regarding the subject statement of work and has performed to the program agency's satisfaction.

Finally, we note that a sufficient price determination memorandum was included in the file for Modification 12. As previously stated, although the auditors may not agree with the contracting officers' price reasonableness determination, it is misleading to imply that it did not exist. In any case, management will take corrective action to ensure to ensure that documentation that should be in contract files is present.

Contract Ceiling. On page 7 (second bullet) of the report, Contract # DOLJ081A20618, Modification #11 was cited not for exceeding the competed and negotiated ceiling value of the contract, but rather a clause that stated "under no circumstances" would funding be increased by more than 10 percent a year. It must be noted that this statement was not required by statute, regulation, or policy. The contracting officer is well within his/her authority to increase contract funding pursuant to FAR 52.243-2 Changes – Cost Reimbursement. The modification was recommended for approval by the Department's Procurement Review Board (PRB), which includes a representative from the Office of the Solicitor, to ensure that procurement action is legally sufficient. More importantly, the PRB's recommendation was approved the Department's Chief Acquisition Officer (CAO) who, by means of Secretary's Order 2-2009, has the authority to prescribe "regulations, policies and procedures regarding the solicitation and award of, and overseeing the administration of, all Departmental acquisitions…." Inasmuch the increase was not prohibited by statute or regulation and was well within the authority of the

CAO, it is misleading to suggest that the authorized funding increase was inappropriate or impermissible. This finding implies that the Department should have conducted a new acquisition, at considerable delay and enormous expense, rather than use the same vendor already available to strategically provide the same services—an unnecessary waste of limited resources and taxpayer dollars. In any case, management will take corrective action to ensure to ensure that documentation that should be in contract files is present.

Equitable Adjustment was Within the Contracting Officer's Authority. Page 7 of the report states that "under the direction of a Program Office [VETS], OASAM-OPS issued one modification for a VETS contract as an equitable adjustment to a contract...for work that exceeded the contracting officer's authorization." The report indicates that the program agency directed the contractor to perform without the contracting officer's knowledge. When the contracting officer discovered the unauthorized activity, they correctly issued a stop work order. The original contract award was for less than $300,000. The contractors (System and Information Services Corporation) submitted a claim for increased costs for travel and labor cost totaling over $500,000 above the original amount established by the contract. The claim submitted by the contractor stated increased costs were attributable to directions given by the VETS program office for travel to more locations as part of their information gathering and for additional interviews than originally identified in the statement of work. This extra travel increased the contractor's cost of performance. There were also other cost increases due to direction given to the contractor by VETS.

The contracting officer had the authority to process this action as an equitable adjustment because the contracting officer verbally authorized the contractor to perform the work. The work performed was within the general scope of the contract and therefore no ratification was required. The contracting officer made a determination that no ratification was required, which was within his/her authority since a verbal order to proceed was issued. In accordance with FAR 1.602-3, an unauthorized commitment occurs when a Government representative who lacks the authority to enter into an agreement on behalf of the Government does so with a contractor. When this occurs, ratification by the contracting officer is required. In this instance, the contracting officer had the authority to act verbally instructed the contractor to proceed. Therefore, an unauthorized commitment did not occur. The condition at FAR 1.602-3(c)(3) was not present; therefore, the contracting officer determined that an equitable adjustment was in the best interest of the Government.[3]

Finding 2*—DOL could not demonstrate it checked the Excluded Parties List System (EPLS), documents conflict of interest certifications, and performed higher levels of review.*

The premise of this finding is based on the absence of documentation in the files reviewed and not on direct evidence of contracts awarded to vendors on the excluded parties list; the presence of conflicts of interest; or improperly awarded contracts or modifications.

In addition, the report's analysis in support of the finding should be more accurate and complete:

[3] This contract was part of a prior investigation conducted by the OIG that revealed contracting abuses for which management took firm corrective action. In the context of this audit the issue raised is a narrow technical one: whether a ratification or equitable adjustment was the correct remedy.

EPLS. Page 8 of the report identifies 24 contracts[4] and modifications for which the component agencies could not demonstrate that they checked EPLS for potential suspended or debarred awardees prior to contract award. The report also states that the OIG checked the EPLS and confirmed that no contracts were awarded to suspended or debarred firms. A contracting officer's signature on the award and the required responsibility determination documents demonstrate EPLS was checked. Although inclusion of EPLS documents in the contract file is not a FAR requirement, and therefore not a procurement violation, it is an internal DOL procedure for quality control used to confirm the EPLS was checked. In any case, management will take corrective action to ensure to ensure that documentation that should be in contract files is present.

Conflict of Interest Certifications. Page 9 of the revised draft report states that 23 contracts[5] did not contain conflict of interest certifications, 19 of which were contracts to SBA 8(a) firms. The revised report further states that the FAR does not exempt agencies from verifying conflict of interest certifications to SBA 8(a) contracts. However, the revised draft report fails mention that conflict of interest "certifications" are not required by the FAR. FAR Subpart 3.101-1 requires that Government procurements should avoid any actual or appearance of conflict of interest, but does not require "certification." Therefore, the revised report's FAR reference for the "certification" requirement is erroneous.

The revised report also states that Department of Labor Manual Series (DLMS) Chapter 2, Section 835A requires that program officials responsible for other than full and open competition explain any past or existing business or personal relations with a proposed contractor or certify that none exist. However, the referenced 19 SBA Section 8(a) contracts by statute are not subject to requirements of full and open competition. Therefore, the DLMS provision cited is inapplicable to those contracts.

Lastly, the OIG report makes reference to a Senior Procurement Executive (SPE) Memorandum, dated December 30, 2008, which requires contracting officers to document conflict of interest certifications made by program officials for sole source contracts. The Senior Procurement Executive memorandum specifically states the sole source requirement must fit within one of the seven circumstances specified by FAR 6.302 for open market buys or FAR 8.405-6 for GSA Schedule actions. The referenced 19 Section 8(a) contracts were awarded in accordance with FAR Part 19.805, are under the total dollar value for competition in accordance with FAR Part 19.805, and are not considered open market buys or GSA Schedule actions.

In any case, management will take corrective action to ensure to ensure that documentation that should be in contract files is present.

Documentation of Higher Level Reviews. Page 10 of the report states that a higher level of review was not conducted on 45 contracts totaling $45 million.[6] It should be noted that this is not a FAR requirement, and therefore not a procurement violation, but an internal office procedure instituted by the Office of Procurement Services starting in 2010. In any case, management will take corrective action to ensure to ensure that documentation that should be in contract files is present.

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[4] Eleven contracts for OASAM-Dallas; 8 contracts for OASAM-OPS; 3 contracts for BLS; and 2 for ETA.
[5] Twelve contracts for OASAM-OPS; 10 for ETA; and 1 contract for BLS.
[6] Thirty-three contracts for OASAM-OPS; 6 contracts for OASAM-Dallas and 6 contracts for ETA.

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Finding 3*—The Department had not updated its procurement regulations and guidance, and did not develop detailed and standardized procedures for EPLS, higher level review, and conflict of interest.*

Use of the Standards. Page 10 of the revised report states that DOL had not developed detailed and standardized procedure for three of the areas reviewed and that consistency and quality of DOL's procurement function was heavily dependent on its component agencies. This aspect of the report attempts to make an argument for the development of Department-wide standardized procedures, using the *Standards* to be followed by all DOL contracting offices regardless of the type of goods or services they procure. The Department's procedures and policies are set forth in the DOLAR and the applicable DLMS—together comprising more than 80 pages as listed below. Together, these procedures address the full range of procurement policy and rules, including EPLS, higher level review and conflict of interest. The sources of these Department-wide methods and procedures are:

- Department of Labor Acquisition Regulation (DOLAR, 48 CFR 2900 (31 pages)
- DLMS 2, Chapter 830, Procurement Management Program (18 pages)
- DLMS 2, Chapter 830, Section 838 and 839, Contracts Greater than 5 Years and Multi-year Contacts (10 pages)
- DLMS 2, Chapter 888, DOL Federal Acquisition Certification In Contracting Program (11 pages)
- DLMS 2, Chapter 889, DOL Acquisition Certification for Contracting Officer Technical Representative Program (12 pages)

These policies and procedures are available on LaborNet and variously cited in the draft audit report.

Although management agrees that there are DOL procurement policies and procedures that need to be updated, management disagrees with the premise that this draft report shows that any findings were caused by a lack of using the *Standards.*

With regard to the OIG's recommended use of the *Standards*, the report does not show how the Department is not in compliance. Management contends that the issuance of the previously mentioned DOLAR, DLMS and Contracting Officer Notices meet the *Standards* requirements of "developing the detailed policies, procedures, and practices to fit [DOL's contracting] operations…." Going forward, we intend to continue complying with this requirement as we update the appropriate acquisition policies and procedures as needed.

Over the last several years, the FAR has been revised to streamline the procurement process and to allow flexibility within the various procurement offices. It is management's position that the FAR, combined with current DOL guidance, provides sufficient guidance for DOL contracting offices.[7]

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[7] Per FAR Subpart 1.101, the Federal Acquisition Regulations System is established for the publication of uniform policies and procedures for acquisition by all executive agencies. FAR 1.302 provides that agency acquisition regulations shall be limited to those necessary to implement FAR policies and procedures within the agency; and additional policies, procedures, solicitation provisions, or contract clauses that supplement the FAR to satisfy the

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Procurement Oversight and Management Reviews. With regard to the report's misgivings about procurement oversight on page 12, for FY 2011, reviews were conducted for Women's Bureau and VETS contracts, and follow-up reviews of the ETA and BLS contracting functions were conducted. For FY 2012, reviews have been completed for BLS, MSHA and OASAM Atlanta, and reviews for OASAM Philadelphia, Dallas, Chicago, San Francisco, and the Office of Procurement Services are scheduled.

Management also objects to the statement on page 13 that "DOL's lack of procurement oversight exposed DOL to both financial and operational risk" - after citing that Senior Procurement Executive has conducted 19 procurement management reviews. None of the report's findings identified any contracts that were awarded improperly or any contract funding that was spent inappropriately. As discussed elsewhere in this response, the statement on the same page that the "OIG estimated DOL could have used $17.5 million in FY 2010 procurement funds more efficiently and that DOL could use future procurement funds more efficiently if DOL takes action to implement our recommendation" is not supported by the report's analysis.

Audit of MSHA Contracting, 2011. Reference is also made in the report's analysis for this finding to previous OIG Audits of MSHA and Job Corps procurement activities. Again, the average reader would not know anything of the remedial actions taken by management in response to those previous audits. With this in mind, the following update is provided:

In response to the OIG's February 2011 audit of MSHA,[8] the Agency, with direct assistance and input from the CAO, Senior Procurement Executive, and DOL Procurement Executive:

- Hired a new cadre of contracting professionals that meet the FAC-C requirements that now manage the MSHA acquisition operation—an undertaking initiated by the detail of a senior procurement official from OASAM-OPS, and the corresponding reassignment of the former MSHA contracting officer to a staff position in another agency.
- Implemented new management procedures to require concurrence by the MSHA contracting officer prior to contract award to determine whether the procurement action is subject to PRB review based upon DOL policy requirements, and if so, has received PRB review and CAO approval.
- Instituted a new monthly tracking report the MSHA Acquisition Management Division to the Director of Administration and Management, with quarterly reports to the MSHA Assistant Secretary to verify that DOL policy and procedures have been met.
- Implemented new management procedures to require two levels of supervisory review of all contracts awarded without full and open competition and all contracts with a value of $100,000 or greater.

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specific needs of the agency. More importantly, FAR 1.304 states that agencies shall control and limit the issuance of agency acquisition regulations and, in particular, local agency directives that restrain the flexibilities found in the FAR and shall not shall not unnecessarily repeat, paraphrase, or otherwise restate material contained in the FAR or higher-level agency acquisition regulations. The areas referenced in this report—EPLS, higher level review, and conflict of interest—are already covered by the FAR and the policies and procedures previously mentioned and, with the exception of updating applicable DOL policies and procedures, would disregard the FAR's guidance against duplicative regulation.

[8] Audit Report Number Report No. 05-11-001-06-001, MSHA's Controls Over Contract Awards Need Strengthening.

- Ensured that all MSHA Contracting Officers have either taken or are enrolled in training to achieve Federal Acquisition Certification in Contracting (FAC-C) Level II certification.
- Received from OASAM training on appropriations law requirements, the DOLAR, and the DLMS during the second quarter of FY 2011 to address deficiencies identified in the audit report. The training was mandatory for all MSHA acquisition personnel (refresher training will take place annually).
- Reached agreement with the Office of the Solicitor (SOL) to extend the existing Memorandum of Agreement for SOL's review of proposed solicitations for an additional three years.

Notably, the OIG accepted these corrective actions as responsive to the audit report's recommendations.

Audit of Job Corps Contracting, 2008. In September 2008, the OIG issued Audit Report Number Report No. 04-08-003-01-370, *Transfer of Job Corps Program Strengthened Procurement Processing But Improvements Are Needed to Ensure Fair and Open Competition.* According to the report, "the transfer of the Job Corps program from ETA to [the Office of the Secretary] strengthened Job Corps procurement and contracting practices through the separation of procurement and program functions. In addition, fewer deficiencies were noted in selected contract awards and procurement actions after the transfer."

In sum, the audit report found that management had *improved* procurement operations for this component. The OIG also accepted management's corrective actions for the deficiencies cited in the report. In addition, in 2010 the Office of Job Corps was realigned back to the Employment and Training Administration. Included in this reorganization was the creation of a stand alone procurement office, headed by a Senior Executive Service manager, with centralized authority over all ETA contracting, to include Job Corps contracting, in lieu of allowing the contracting function to return to the field components of Job Corps as in the past. A key purpose in this organizational structure was to establish a clear segregation of duties between program procurement staff that buying goods and services and program officials that use those goods and services, as well as provide strong oversight and direction to the ETA procurement activity.

Finally, as part of the analysis of this finding the report reviews management's recent history of Procurement Management Reviews. Procurement Management Reviews are a form of accountability oversight conducted by management to help ensure sound procurement practices are being implemented. Within the last four years, formal procurement reviews have been conducted and recommended improvements have been initiated in the BLS, MSHA, and ETA procurement offices. As previously mentioned, for FY 2011, reviews were conducted for Women's Bureau and VETS contracts, and follow-up reviews of the ETA and BLS contracting functions were conducted. For FY 2012, reviews have been completed for BLS, MSHA and OASAM Atlanta, and reviews for OASAM Philadelphia, Dallas, Chicago, San Francisco, and the Office of Procurement Services are scheduled.

OIG Recommendation: The Assistant Secretary for Administration and Management update DOL's procurement regulations and guidance; and develop detailed and standardized procurement procedures using the Standards for Internal Control in the Federal Government and input from the component agency officials.

As noted at the outset, management acknowledges that any process can be improved and it will take appropriate action to update its Department-wide policies and procedures to address the findings outlined in the draft report. With this in mind, management will take the following actions:

DLMS 2-830 and the DOLAR are Department-wide policy and regulations. The DOLAR was last updated in 2004 and DLMS 2-830 in 2008. DLMS 2-830 is scheduled to be updated in FY 2012, starting with the issuance of a draft for comment during the 4th quarter. Management will also obtain input from the component agencies. The DOLAR is also scheduled to be updated in FY 2013, starting with the issuance of a draft for comment by the 1st quarter of FY 2013. In the course of reviewing and updating these policies and regulations, management will consider the *Standards* as an informed but not controlling source.

Finally, management will take the initiative to develop and issue clarifying guidance on conflict of interest statements by 4th quarter of FY 2012.

While unrelated to this audit, management has also issued the following guidance to improve the Department's overall procurement program in FY 2012:

- Include appropriate provisions in contracts that places on contractors the affirmative duty to inform the contracting officer of suspected procurement violations, including: (1) any circumstance in which the contractor is directed to hire or contract with a particular person or entity to provide services under a contract; (2) any circumstance in which the contractor is directed to provide services outside the scope of the contract awarded; and (3) any other suspected or known violations of procurement laws or procedures. The contracting officer will notify the Procurement Executive who will then be responsible for investigating these claims and taking appropriate action.
- For select agencies, require the agency and the Contracting Officer's Technical Representative to submit a statement certifying any task order they submit is properly within the scope of the contract and that there is no conflict of interest. Any dispute between the contractor and the contracting agency with respect to the proper scope of work will be resolved by the Contracting Officer. Any matters that cannot be resolved at that level will be arbitrated by the Procurement Executive.
- Completed additional procurement training for both DOL senior executive staff, as well as acquisition staff at all levels of the organization focusing on ethical and procurement integrity "do's and don'ts," and lessons learned.

Be assured that nothing in this response is intended to suggest that management does not take seriously and value the recommendations of the OIG. In addition, management recognizes and accepts that, while acquisition authority is decentralized among several agencies and those agencies have responsibilities for their procurement activities, OASAM has oversight responsibilities for the Department. In this regard, the OIG's review and recommendations are helpful to the Department's stewardship of its contracting resources.

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As always, we appreciate the opportunity to provide input and look forward to the continued collaboration with your office. If you have any questions or comments please contact me at (202) 693-4040 or have your staff contact Al Stewart, Procurement Executive, at Stewart.Milton@dol.gov or (202) 693-4021.

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