

U.S. Department of Labor

Office of Inspector General—Office of Audit

**EMPLOYMENT AND TRAINING
ADMINISTRATION**



MANAGEMENT & TRAINING CORPORATION DID NOT ENSURE BEST VALUE IN AWARDING SUB-CONTRACTS AT THE PAUL SIMON JOB CORPS CENTER

Date Issued:
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March 30, 2012
26-12-002-03-370

BRIEFLY...

Highlights of Report Number 26-12-002-03-370, issued to the Assistant Secretary for Employment and Training.

WHY READ THE REPORT

Management and Training Corporation (MTC) operates the Paul Simon Job Corps Center (MTC Paul Simon). This report discusses how MTC Paul Simon did not ensure best value was received by the government when awarding sub-contracts and purchase orders. While MTC is not required to specifically comply with the Federal Acquisition Regulation (FAR), DOL policy requires MTC's procedures to be consistent with FAR principles for fair and open competition. We questioned costs totaling \$1.3 million due to MTC Paul Simon's non-compliance with its own procurement Standard Operating Procedures (SOP). The report also discusses process improvements MTC, ETA, and Job Corps need to make to ensure MTC Paul Simon future sub-contract and purchase order awards comply with its own procurement guidance.

MTC's current contract with Job Corps to operate the center covers the five-year period from August 1, 2008, to July, 31 2013. The contract value totals approximately \$49 million, including \$19 million for the base 2-year period and \$30 million over three option years.

WHY OIG CONDUCTED THE AUDIT

Our audit objective was to answer the following question:

Did MTC Paul Simon ensure best value when awarding sub-contracts and claiming costs?

Our audit work was conducted at the MTC Paul Simon Job Corps Center in Chicago, IL, and at the Chicago Regional Office of Job Corps in Chicago, IL.

READ THE FULL REPORT

To view the report, including the scope, methodology, and full ETA and MTC responses, go to:

<http://www.oig.dol.gov/public/reports/oa/2012/26-12-002-03-370.pdf>.

March 2012

MANAGEMENT & TRAINING CORPORATION DID NOT ENSURE BEST VALUE IN AWARDING SUB-CONTRACTS AT THE PAUL SIMON JOB CORPS CENTER

WHAT OIG FOUND

MTC Paul Simon improperly awarded 8 of the 10 sub-contracts managed during our review period. For the eight sub-contracts, we questioned \$1,101,414 because MTC Paul Simon did not comply with its own SOPs. Specifically, cost or price analysis and responsibility checks of the sub-contractors' ability to satisfactorily perform the sub-contracts were not performed.

Issues were also found in the award of purchase orders to vendors for 23 of the 50 expenditures more than \$3,000 that we statistically selected. For 16 of these expenditures, MTC Paul Simon did not adequately justify sole source procurements as required by its own SOPs; and for 7 expenditures the center improperly claimed costs for a grant awarded by the city of Chicago. We questioned \$224,198 for the 23 expenditures.

These conditions occurred because MTC Paul Simon had not established a control environment, including training and oversight, to ensure consistent compliance with its SOPs. In addition, neither ETA contracting personnel nor Job Corps regional staff adequately monitored MTC Paul Simon procurement activities.

WHAT OIG RECOMMENDED

We recommended the Assistant Secretary for Employment and Training recover questioned costs as appropriate and direct MTC and MTC Paul Simon to strengthen procurement procedures, training, and oversight to ensure compliance with its own procurement criteria. We also recommended that ETA contract personnel and Job Corps regional staff review all future MTC Paul Simon sub-contracts for procurement compliance and approval prior to award.

ETA generally agreed with our findings, fully or partially accepted our recommendations, and will require MTC Paul Simon to request ETA approval before any future sub-contracting awards. MTC disagreed with our draft report, including our use of the FAR as criteria for sub-contracting awards made by MTC. Based on the responses of MTC and ETA, we adjusted the report to reflect that MTC must comply with its own procurement SOPs, which must be consistent with the FAR principles to ensure best value.

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U.S. Department of Labor

Office of Inspector General
Washington, D.C. 20210



March 30, 2012

Assistant Inspector General's Report

Ms. Jane Oates
Assistant Secretary
for Employment and Training
200 Constitution Avenue, NW
Washington, DC 20210

Job Corps is a residential training program for disadvantaged youth where employability skills are developed. Its training activities and living facilities are housed within 125 centers throughout the country. The Job Corps program is administered by the Department of Labor's (DOL) Employment and Training Administration (ETA) per authorization provided by the Workforce Investment Act (WIA). Within ETA, the program is managed by the Office of Job Corps, which consists of a national office and 6 regional offices. The Job Corps program's budget for Fiscal Year (FY) 2010 totaled about \$1.7 billion.

Management and Training Corporation (MTC) operates the Paul Simon Job Corps Center (MTC Paul Simon). MTC's contract with Job Corps to operate the center covers the 5-year period from August 1, 2008, to July, 31 2013. The contract value totals approximately \$49 million, including \$19 million for the base 2-year period and \$30 million for 3 option years.

The FAR Subpart 44.302 requires ETA to determine the need for a Contractor's Purchasing System Review (CPSR) based on, but not limited to, the past performance of the contractor and dollar value of sub-contracts (generally \$25 million). FAR Subpart 44.301 states the objective of a CPSR is to evaluate the efficiency and effectiveness with which the contractor spends government funds and complies with government policy when sub-contracting. The review provides the Contracting Officer with a basis for granting, withholding, or withdrawing approval of the contractor's purchasing system.¹ Furthermore, FAR Subpart 44.303 states, "The 13 considerations listed in FAR Subpart 44.202-2 for consent evaluation of particular sub-contracts also shall be used to evaluate the contractor's purchasing system, including the contractor's policies, procedures, and performance under that system. Special attention shall be given to:

- (a) The results of market research accomplished;
- (b) The degree of price competition obtained;

¹ETA reviews each center operator's procurement systems every three years. If the procurement system is "approved," ETA contracting officials reduce their oversight of the center operator's procurement activities.

- (c) Pricing policies and techniques, including methods of obtaining certified cost or pricing data...;
- (d) Methods of evaluating sub-contractor responsibility, including the contractor's use of the Excluded Parties List System...;
- (g) Planning, award, and post-award management of major sub-contract programs...; and
- (j) Appropriateness of types of contracts used.”

See Exhibit 2 for selected details on the FAR criteria ETA Contracting Officers use to evaluate contractor purchasing systems.

DOL policy for conducting CPSRs (Section 4.9) states that it is in the government's interest to perform CPSRs when a contractor's total combined business with Job Corps exceeds \$25 million. The policy further clarifies the center operators' responsibility to establish procurement policies and procedures that are consistent with the FAR. The DOL policy states that under the terms of center operator contracts, Contracting Officers are responsible for ensuring that contractors procure goods and services on behalf of the Job Corps program in conformance with the contract provisions and principles detailed in the FAR. Contracting officers can either review and consent to all sub-contracts for the contract, or may approve the contractor's purchasing system. The policy also states that the FAR allows for approval of purchasing systems that demonstrate compliance with FAR principles after a rigorous review of all purchasing manuals and procedures. Additionally, MTC's corporate Standard Operating Procedures (SOP) require that its center processes be consistent with government regulations.²

MTC had an approved CPSR. As such, MTC Paul Simon was required to submit only its health and medical sub-contracts to ETA for consent prior to contract award. Additionally, MTC Paul Simon's SOPs were approved by ETA when MTC was awarded the contract to operate MTC Paul Simon. If MTC Paul Simon sub-contracting execution is not consistent with its SOPs, then ETA is authorized by the FAR to withdraw MTC CPSR approval.

Based on the responses of MTC and ETA to our draft report (Appendices D and E) and subsequent communication, we revised our criteria to evaluate MTC Paul Simon's compliance with its own procurement SOPs and the SOPs consistency with the FAR requirement for ensuring best value to the government. As such, our audit objective was to answer the following question:

Did MTC Paul Simon ensure best value when awarding sub-contracts and claiming costs?

To address our audit objective, we reviewed criteria that were applicable to MTC Paul Simon's procurement activities as of March 2011, including specific sections of the FAR, Job Corps' Policy and Requirements Handbook (PRH), contract provisions, and the center's SOP. We analyzed MTC and Job Corps Chicago Regional Office assessments of MTC Paul Simon operations and performed process walkthroughs with key MTC Paul

²MTC SOP #13.01, General Purchasing Policy, dated January 1, 2011, Paragraph B.1.

Simon and MTC officials, as well as ETA and Job Corps regional office staff. We reviewed MTC Paul Simon's SOPs to determine whether they ensured open competition and best value to the government and tested each of the sub-contracts and expenditures³ for compliance with the SOPs. Our testing included a review of the MTC Paul Simon's sub-contracts to determine if the center obtained adequate price competition or properly justified its absence; considered past performance, technical requirements, and ability to comply with proposed performance and delivery schedules; and performed adequate cost or price comparisons. We also determined whether documentation was maintained to support claimed costs.

The audit covered sub-contracts managed and expenditures incurred by MTC Paul Simon from April 1, 2010, to March 31, 2011. We examined all 10 sub-contracts awarded by MTC Paul Simon during this period, totaling \$1,905,111. We also reviewed a statistical sample of 50 expenditures more than \$3,000, totaling \$622,244, from a universe of 117 expenditures totaling \$992,545. These expenditures were generally initiated by purchase orders and were separate items from the 10 sub-contracts we reviewed.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Additional background information is detailed in Appendix A, and our objective, scope, methodology, and criteria are detailed in Appendix B.

Results In Brief

MTC Paul Simon did not always ensure best value was received by the government when awarding sub-contracts and purchase orders. We questioned costs totaling \$1.3 million⁴ because MTC Paul Simon did not always comply with its SOPs and ensure best value to the government. Based on our statistical sampling, we estimate that improperly awarded sub-contracts and purchase orders may be as high as \$1.8 million.

MTC Paul Simon improperly awarded 8 of 10 sub-contracts managed during our review period. For the 8 sub-contracts, we questioned \$1,101,414 because the center had not complied with its own procurement procedures and ensured best value. Specifically, cost or price analysis was not performed even though MTC Paul Simon's SOPs require those procedures, and responsibility checks (such as evaluating quality, delivery, and technical aspects) as required.⁵ Three of the sub-contracts were for physician services, including mental health. As such, it was critical for MTC Paul Simon to ensure its

³We also reviewed expenditures associated with purchase orders and other documents procuring goods and services, the use of which is addressed in MTC Paul Simon's SOPs.

⁴A final determination will be made by ETA as to the amount of excess funds paid by contractor to be recovered while recognizing the value of goods and services received.

⁵MTC selection criteria for suppliers include quality, delivery, and technical aspects (SOP 13.01). We refer to this evaluation as "responsibility checks" throughout this report.

students received adequate medical care by performing responsibility checks. Responsibility checks included technical skills, experience, and past performance in the following areas: providing services to a diverse student population, ages 16-24; and conducting mental health assessments, supervising treatment plans, and providing individual and group therapy and training. In addition, MTC Paul Simon did not follow its own SOPs, which required documentation to support \$214,020 in payments made for three of the sub-contracts. These costs are already included in the \$1.1 million we questioned because the awarding of the sub-contracts did not ensure best value.

Issues were found in the award of purchase orders to vendors for 23 of the 50 expenditures more than \$3,000 we statistically selected. For 16 expenditures, MTC Paul Simon did not adequately justify and document sole-source procurements and MTC Paul Simon management approved the expenditures without verifying the adequacy of the sole source justifications. For 7 other expenditures, the center improperly submitted denied grant costs for sole-source purchases. We questioned \$224,198 in total costs for the 23 expenditures. The \$224,198 represented 23 percent of the \$992,545 in expenditures tested. Based on our statistical sample, we are 95 percent confident there were between \$321,509 and \$496,695 in potential questioned costs.

These conditions occurred because MTC Paul Simon did not always comply with its own SOPs and training and oversight were not adequate. The center also did not have sufficiently detailed procedures in place. As such, MTC Paul Simon had not established a control environment to ensure compliance and best value to the government. In response to our draft report, ETA generally agreed with our findings, fully or partially accepted all of our recommendations, and modified MTC Paul Simon's CPSR to require ETA approval before any future sub-contracting awards. However, ETA requested we clarify the relationship between the FAR criteria cited in our report and the contractor's procurement SOPs. MTC disagreed with our draft report, including our use of the FAR as criteria for sub-contracting awards made by MTC. Based on the responses of MTC and ETA, we adjusted the report to reflect that MTC must comply with its own procurement SOPs, which must be consistent with the FAR principles for fair and open competition. The change in criteria and nothing MTC provided us caused us to change our conclusions. In addition, neither ETA contracting personnel nor Job Corps regional staff adequately monitored MTC Paul Simon procurement activities to determine if MTC Paul Simon achieved best value through fair and open competition in its sub-contracting (see Appendix D for ETA's response to our draft report and Appendix E for MTC's response to our draft report).

We recommended the Assistant Secretary for Employment and Training recover questioned costs as appropriate; direct MTC and MTC Paul Simon to strengthen procedures, training, and oversight to ensure compliance with its own procurement criteria; and direct ETA contract personnel and Job Corps regional staff to review all future MTC Paul Simon sub-contracts and purchase orders for best value prior to award approval.

RESULTS AND FINDINGS

Objective — Did MTC Paul Simon ensure best value when awarding sub-contracts and claiming cost?

MTC Paul Simon improperly awarded sub-contracts resulting in more than \$1.3 million in questioned costs.

Finding — MTC Paul Simon did not always award sub-contracts and purchase orders or claim costs as required by its own procurement guidance.

MTC Paul Simon did not always ensure best value when awarding sub-contracts and purchase orders. Based on our testing, MTC Paul Simon improperly awarded 8 of the 10 sub-contracts reviewed. For the 8 sub-contracts, we questioned \$1,101,414 because MTC Paul Simon did not comply with its own procurement procedures and ensure best value. Specifically, cost or price analysis and responsibility checks of the sub-contractors' ability to satisfactorily perform the contract were not performed. In addition, MTC Paul Simon improperly awarded purchase orders for 23 of the 50 expenditures more than \$3,000 we statistically selected. We questioned \$224,198 for the 23 expenditures. In total, we questioned \$1.3 million⁶ in costs claimed by MTC Paul Simon. However, based on our statistical sampling, the total costs for improperly awarded sub-contracts and purchase orders may be as high as \$1.8 million (\$1,325,712 plus \$496,695).

These conditions occurred because MTC Paul Simon had not established a control environment, including training and oversight, to ensure compliance with its own SOPs and ensure best value to the government. Also, neither ETA contracting personnel nor Job Corps regional staff adequately monitored MTC Paul Simon's procurement activities to determine if MTC Paul Simon achieved best value through fair and open competition in its sub-contracting.

MTC Paul Simon's SOP Requirements

When awarding sub-contracts and purchase orders, MTC Paul Simon is required by its contract and the PRH to follow its own procurement SOPs. The MTC Paul Simon SOPs for procuring goods or services and claiming costs include the following:

MTC Corporate Finance Policy SOP # 13.01, *General Purchasing Policy*

- B.1. Professional Ethics – Procurement shall be conducted to obtain what is required, when needed, at the best overall value, always considering the lowest practical price, economic quality and advantages of competition. Processes shall be consistent with MTC policies and procedures, the applicable government contract, government regulations, and other contracts as they apply.

⁶A final determination will be made by ETA as to the amount of excess funds paid by contractor to be recovered while recognizing the value of goods and services received.

- B.7. Source Selection Criteria – Supplier bids shall be evaluated upon best value. Completed bid documentation will be reviewed by the appropriate level of authority prior to commitment. Written requests for quotation shall provide specifications in adequate detail for the purpose of pricing, quality, delivery, and technical aspects, as appropriate.

- B.7. a, & b. Market Research and Price Analysis – The buyer should perform and document market research on an ongoing basis, and to the maximum extent practicable, in order to locate suppliers or verify if a supplier is the only source. The buyer should perform and document price analysis on an ongoing basis, and to the maximum extent practicable. The price analysis may be analysis either through lump sum or unit cost pricing

MTC Corporate Finance Policy SOP # 13.02, *Purchasing Policy* – Job Corps

- B.7. a. & b. Bidding Levels and File Documentation – For purchases made under the Major Purchase Policy (reference 13.04), minimum bidding levels and the file documentation shall be followed.
 - a. Competition is required for purchases greater than \$3,000
 - b. Where competition is required, the buyer shall seek to obtain the following minimum number of vendor bids:
 - Up to \$3,000 – One quotation
 - Over \$3,000 – Minimum of three quotations – must be in writing.

MTC Corporate Finance Policy SOP # 13.04.3, *Major Purchase Procedure* – Job Corps

- Procedures, 2.a. – The buyer shall ensure that the purchase is properly advertised and/or solicited. Possible sources may be obtained through indirect solicitations (newspaper advertising, the federal government point of entry, currently FedBizOpps, and other public notices or advertising) and direct solicitations (mailings and phone calls). If indirect solicitations do not provide the minimum number of bidders, also use direct solicitations when possible.

- Procedures, 2.c. – Competitive bidding practices are used as required. A sole source justification memo shall be provided where competition, federal government, or Corporate Strategic Agreement sourcing is not possible. The memo must be completed prior to awarding the purchase.

- Procedures, 2.k. – The buyer shall ensure for purchases greater than the Simplified Acquisition Threshold (\$100,000), the requirements for Cost or Pricing Data are applied. Exemptions for Cost or Pricing Data include: price is based on adequate price competition; price is set by law or regulation, and commercial items/services. (Cost or Pricing Data requirements are outlined in the FAR clauses contained in the Prime Contract.

- Procedures, 3.d. and e. – If bidding is required, the buyer shall complete a Bid Abstract form. The form shall show the comparative pricing for all bidders. The form or attached memo shall indicate how the purchase was solicited, names of newspapers with dates advertised, Federal government point of entry (currently FedBizOpps), direct mailing (including name source), phone log, etc.
- Procedures, 4.c. – If the purchase is greater than \$3,000, the buyer shall complete a standard Award Justification form. If the procurement is designated a sole source, a Sole Source Justification memo is required. The memo shall be written and signed by the person who designated the purchase as a sole source and also signed by the center director.

MTC Paul Simon’s SOP # 506.2(h), Purchase Orders-Preparation & Approval

- C.5. Buyer complete award justification form showing the reasons for awarding the order to the successful bidder. If a sole source is cited, a sole source memo must accompany. Ensure all documentation is complete in accordance with local SOPs.

MTC Paul Simon’s SOP # 506.2(l), Internal Controls – Required Documentation

- A. Purpose – To establish a Standard Operating Procedure which govern documentation that clearly demonstrates the reasons for procurement and the propriety of actions taken.
- B.1. Policy – All actions involving the procurement of property or services are thoroughly documented in the following ways:
 - a. Acquisition justification
 - c. Bids obtained in accordance with center procurement policy
 - d. Justification for awards made to other than low bidder
 - e. Justification of sole source procurement where competition is not involved
 - f. Applicable approvals of Center Management, MTC, and DOL

MTC Paul Simon’s SOP # 506.2(o), Sub-Contracting *Procedures*

- A. Purpose – To establish a policy and procedure for sub-contracting in the performance of the prime contract.
- B. Policy – The policy is written in accordance with PRH, Chapter 5; MTC Policy 500.1; and MTC Policy 310.8.
- C.4. Buyer ensure that the request for consent contains the following elements when applicable to specific sub-contracts.

- a. Documentation supporting need for work to be performed.
- b. Clear description of work, including schedules.
- c. An accompanying cost breakdown that allows a determination of reasonable costs.
- d. Memorandum of negotiation.
- e. Evidence of competitive bids, or explanations indicating why competitive bids were not appropriate.

MTC Paul Simon's SOP # 506.2(r), Internal Control – Contract Employment of Health Professional Sub-contractors

- C.2. Ensure that the recruitment of qualified health professionals is reasonably wide-spread using such approaches as calls to individual professionals, professional organizations, local hospitals/clinics; posting of requirement with local hospitals and clinics; and newspaper advertisements.
- C.3. Ensure that solicitations and subsequent contracts with health professionals, utilize wording similar to Department of Labor's Standard Contracts for center physicians, Dentist, and Mental Health consultants.

Non-Compliance Resulted In More Than \$1.3 million In Questioned Costs

We reviewed the 10 sub-contracts, totaling \$1,905,111, managed by MTC Paul Simon from April 1, 2010, to March 31, 2011. Additionally, we reviewed a statistical sample of 50 expenditures more than \$3,000, totaling about \$622,244, from a universe of 117 expenditures totaling \$992,545.

MTC Paul Simon did not consistently comply with its own SOPs resulting in questioned costs totaling more than \$1.3 million. Table 1 summarizes the types of non-compliance, the number of instances, and the questioned costs for each type.

Table 1: MTC Paul Simon’s non-compliance resulting in questioned costs

SOP Non-compliance	Sub-contracts more than \$25,000 / amount of questioned costs	Expenditures more than \$3,000 / amount of questioned costs
Responsibility checks were not executed before sub-contract award*; Price analysis not performed SOP # 13.01 B.7., a. & b.	8 of 10 (80%) \$1,101,414	Not applicable
Inadequate sole-source justification, SOP # 13.04.3 (Par B.4); SOP # 506.2(h), C.5	Not applicable	Sample: 16 of 50 (32%) \$82,359
Costs claimed for grant awarded by the city of Chicago.	Not applicable	Sample: 7 of 50 (8%) \$141,939
Totals \$1,325,712	\$1,101,414	Sample: 23 of 50 (48%) \$224,198

*SOP # 13.01, Paragraph B.7 states, “Written requests for quotation shall provide specifications in adequate detail for the purpose of pricing, quality, delivery, and technical aspects, as applicable.” Responsibility checks include quality, delivery, and technical aspects associated with vendor capability. In addition, responsibility checks also include technical skills, experience, and past performance in the following areas: providing services to a diverse student population, ages 16-24; and conducting mental health assessments, supervising treatment plans, and providing individual and group therapy and training.

Sub-contracts More Than \$25,000 with Questioned Costs

As noted, we questioned costs for 8 of the 10 sub-contracts managed by MTC Paul Simon. The following are examples of how MTC Paul Simon did not ensure (1) compliance with its SOPs; or (2) best value to the government:

- In 2008, MTC Paul Simon awarded a \$400,848 physician services contract with a 2-year base plus 3 option years to Rush University. Rush University had been MTC Paul Simon’s physician services provider under the previous center operator. In awarding the sub-contract, MTC Paul Simon requested bids on the FedBizOps website and received two bids. Paul Simon awarded the sub-contract to Rush University even though they were the higher bidder. MTC Paul Simon did not comply with MTC Headquarters’ SOP # 13.01 when awarding the

sub-contract to Rush University because responsibility checks and cost or price analyses were not performed as required. Even though the ETA Contracting Officer approved the award, the center did not document adequate justification for selecting a higher bid as required by MTC Paul Simon's SOP # 506.2(l), B.1.d. As such, we questioned \$234,192, which was the entire amount expended on the sub-contract.

- In 2008, MTC Paul Simon awarded a \$413,934 mental health services contract with a 2-year base plus 3 option years to Northwest Neuropsychology. In awarding the sub-contract, MTC Paul Simon requested bids on the FedBizOps website and received two bids. Paul Simon awarded the sub-contract to Northwest Neuropsychology even though they were the higher bidder.

MTC Paul Simon did not comply with MTC Headquarters' SOP # 13.01 when awarding the sub-contract to Northwest Neuropsychology because responsibility checks and cost or price analyses were not performed as required. Even though the ETA Contracting Officer approved the award, the center did not document adequate justification for selecting a higher bid as required by MTC Paul Simon's SOP # 506.2(l), B.1.d. As such, we questioned \$225,476, which was the entire amount expended on the sub-contract.

- In 2008, MTC Paul Simon awarded a \$395,515 dental services contract with a 2-year base plus 3 option years to Ashburn. MTC Paul Simon requested bids on the FedBizOps website and then awarded the sub-contract to Ashburn because it was the only bidder.

MTC Paul Simon did not comply with MTC Headquarters' SOP # 13.01 when awarding the sub-contract to Ashburn because responsibility checks and cost or price analyses were not performed as required. As such, we questioned \$236,496, which was the entire amount of the sub-contract.

See Exhibit 1 for a list of the 8 MTC Paul Simon sub-contracts and exceptions where we questioned costs.

Some Invoice Payments Lacked Adequate Supporting Documentation

MTC Paul Simon did not obtain required supporting documentation as required by its own SOPs prior to payment for three of the physician sub-contracts we reviewed. For these sub-contracts, required documentation to support billed hours was not obtained and reviewed prior to payment. The three doctors had billed hours that were not supported, totaling \$63,918, \$72,536, and \$77,565. In total, \$214,020 in payments lacked adequate supporting documentation. These costs were included in the \$1.1 million we questioned because the sub-contracts were improperly awarded.

Expenditures More Than \$3,000 That Resulted In Questioned Costs

As previously noted, MTC Paul Simon did not comply with its own SOPs when awarding purchase orders to vendors for 23 of the 50 expenditures more than \$3,000 tested. For 16 expenditures, MTC Paul Simon did not adequately justify and document sole-source procurements and MTC Paul Simon management approved the expenditures without verifying the adequacy of the sole source justifications. For 7 other expenditures, the center improperly submitted denied grant costs for sole-source purchases. The following are examples of each type of non-compliance:

- *Inadequate sole-source justification* – From our sample of 50 expenditures, MTC Paul Simon sole-sourced 16 purchases. In all instances, the center did not document justification for the sole-source purchases. As such, MTC Paul Simon did not provide assurance that no other responsible party existed. In addition, MTC Paul Simon did not perform responsibility checks prior to physician selection. Furthermore, MTC Paul Simon did not provide assurance that cost or price analysis was performed as required by its own SOPs. Consequently, we questioned \$82,359 paid to vendors for the 16 expenditures.
- *Improperly submitted grant costs* – MTC Paul Simon claimed \$141,940 for seven expenditures related to a grant awarded to the center by the city of Chicago. In accordance with MTC Headquarters' SOP 13.01, MTC should have conducted fair and open competition and awarded a purchasing instrument appropriate to the circumstances. Under the grant, the city of Chicago reimbursed MTC Paul Simon for academic training provided to Job Corps students by the Youth Connection Charter School (YCCS), a Chicago Public Schools System charter school program located at MTC Paul Simon. According to MTC, these training costs were covered solely by the grant and were not charged to Job Corps. We found that the city of Chicago denied MTC Paul Simon's claims for the seven expenditures we reviewed because the center missed voucher submission cutoff dates, spent more than the available grant funds, and claimed building improvement costs to redo work for which the city had paid the previous year. MTC Paul Simon then improperly claimed the costs on reimbursement reports submitted to Job Corps.

We questioned the \$224,198 in total costs for the 23 expenditures. The \$224,198 represented 23 percent of the \$992,545 in expenditures tested. Based on our statistical sample, we are 95 percent confident there were between \$321,509 and \$496,695 in potential questioned costs because vendor selection did not comply with MTC Paul Simon's own SOPs.⁷

Non-Compliance Caused By Weak Control Environment

These conditions occurred because MTC Paul Simon did not always follow its own SOPs as cited in this report, and training and oversight were not adequate. The center

⁷The mid-point estimate was \$427,160.

also did not have sufficiently detailed procedures in place. MTC Paul Simon can improve its procurement SOPs to include adequate documentation, evaluator signatures, advertising, evaluations, and cost support. For example, specific guidance on justifying sole source procurement should result in more effective efforts to solicit multiple sources (such as market resource, direct solicitations) and improved documentation of those efforts. As such, MTC Paul Simon had not established a control environment to ensure compliance and best value to the government. In response to our draft report, MTC disagreed with our use of specific FAR criteria when assessing MTC Paul Simon's procurement practices. Based on the responses of MTC and ETA, we adjusted the report to reflect that MTC must comply with its own procurement SOPs, which must be consistent with the FAR principles for fair and open competition. We also believe that MTC's response does not adequately address its inconsistent contracting practices as defined by its own procurement guidance. The change in criteria and nothing MTC provided us changed our conclusions.

MTC conducted a Corporate Program Assessment at MTC Paul Simon in April 2011. As part of this assessment, MTC stated no concerns were found with MTC Paul Simon's compliance with SOP procurement requirements. In addition, neither ETA contracting personnel nor Job Corps regional staff adequately monitored MTC Paul Simon's procurement activities to determine whether the center's use of competition and best value were achieved in its sub-contracting. MTC had an approved purchasing system and MTC Paul Simon obtained consent from the ETA Contracting Officer for its health and medical sub-contracts.

Recommendations

We recommend that the Assistant Secretary for Employment and Training require the Management and Training Corporation to:

1. Strengthen MTC Paul Simon SOPs pertaining to procurement. Revisions need to include the required documentation and evaluator signatures and the specific steps to ensure sub-contracts and expenditures are advertised, evaluated, awarded, and costs supported.
2. Repay questioned costs as appropriate. 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. This also includes a final determination pertaining to the inadequately documented invoice payments.
3. Provide training as needed to ensure procurement staff is proficient on its own MTC Paul Simon procurement requirements.
4. Develop procedures for providing and documenting supervisory oversight of MTC Paul Simon procurements.

Also, we recommend that the Assistant Secretary require the Regional Job Corps Office and ETA Contracting Officers to:

5. Strengthen procedures to ensure MTC Paul Simon complies with its own procurement guidance when awarding sub-contracts and purchase orders and claiming related cost. This should include reviewing MTC Paul Simon's procurement activities during on-site center assessments.
6. Review all future MTC Paul Simon sub-contracts for adequate procurement compliance prior to approval.

We appreciate the cooperation and courtesies that ETA personnel and MTC Paul Simon officials extended to the Office of Inspector General during this audit. OIG personnel who made major contributions to this report are listed in Appendix F.



Elliot P. Lewis
Assistant Inspector General for Audit

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Exhibits

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Exhibit 1**MTC Paul Simon Sub-contracts and SOP Non-compliance**

This table summarizes the SOP non-compliance for 5 of the 8 sub-contracts where we identified non-compliance. The non-compliance issues for the other 3 sub-contracts (Rush University, Northwest Neuropsychology, and Ashburn) are discussed on pages 9 and 10 of this report.

Vendor Name	Amount of Contract	Goods or Service Provided	SOP Non-compliance
MedClean	\$214,446	Linen Services	<ul style="list-style-type: none"> • Responsibility checks not developed and used • Cost or Price Analysis was not conducted or documented
Groot Industries	103,247	Waste Management Services	<ul style="list-style-type: none"> • Responsibility checks not developed and used • Cost or Price Analysis was not conducted or documented
Tropical Optical	27,177	Optometry	<ul style="list-style-type: none"> • Responsibility checks not developed and used • Cost or Price Analysis was not conducted or documented
Petty Exterminating	13,788	Exterminating Services	<ul style="list-style-type: none"> • Responsibility checks not developed and used • Cost or Price Analysis was not conducted or documented
Chicago Technology	46,592	Maintenance Agreement for Printers	<ul style="list-style-type: none"> • Responsibility checks not developed and used • Cost or Price Analysis was not conducted or documented
Total	\$405,250		

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Exhibit 2

FAR Criteria on Sub-contracting Used by ETA Contracting Officers

The following FAR subparts show what ETA Contracting Officers should do when reviewing sub-contracting by center operators.

FAR Part 44, *Subcontracting Policies and Procedures*

- FAR Subpart 44.202-2(a) (5) – Obtain adequate price competition or properly justify its absence.
- FAR Subpart 44.202-2(a)(7) and FAR Subpart 9.104–1 – Obtain a sound basis for selecting and determining the responsibility of the particular subcontractor, including past performance, technical requirements, and ability to comply with proposed performance and delivery schedules.
- FAR Subpart 44.202-2(a) (8) – Perform adequate cost or price analysis or price comparisons and obtain certified cost or pricing data and data other than certified cost or pricing data.
- FAR Subpart 44.202-2(a) (11) – Adequately and reasonably translate prime contract technical requirements into subcontract requirements.
- FAR Subpart 44.201-1(b) *Consent requirements* – If the contractor does not have an approved purchasing system, consent to subcontract is required by the contracting officer.

FAR Subpart 52.216-7, *Allowable Cost and Payment*

- Subpart 52.216-7(a) *Invoicing* (sub-paragraph 1) – The Government will make payments to the Contractor in accordance with FAR Subpart 31.2.

FAR Subpart 31.2 *Contracts with Commercial Organization*

- Subpart 31.201–2 (d) *Determining Allowability* – A contractor is responsible for accounting for costs appropriately and for maintaining records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, and are allocable to the contract. The contracting officer may disallow all or part of a claimed cost that is inadequately supported.

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Appendices

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Appendix A

Background

Job Corps is authorized by Title I-C of the Workforce Investment Act of 1998 (WIA) and is administered by ETA's Office of Job Corps under the leadership of the National Director and supported by a National Office staff and a field network of 6 Regional Offices. The Job Corps program's budget for FY 2010 totaled about \$1.7 billion.

The purpose of Job Corps is to assist disadvantaged youth, ages 16–24, who need and can benefit from a comprehensive program, operated primarily in the residential setting of a Job Corps Center (JCC), to become more responsible, employable, and productive citizens by developing employability skills. Its training activities and living facilities are housed within 125 centers throughout the country.

MTC Paul Simon is located at Chicago, IL. On June 10, 2008, MTC was awarded contract number DOL-J08RA-00018 to operate MTC Paul Simon effective August 1, 2008. The contract was for operations of MTC Paul Simon for the base 2-year period August 1, 2008, through July 31, 2010, at an estimated cost of \$19 million. In addition, MTC was awarded 3 option years, for the period August 1, 2010, through July 31, 2013, at a total cost of approximately \$30 million. MTC Paul Simon has an authorized On-Board-Strength of 354 students.

MTC had an approved CPSR. As such, MTC Paul Simon was required to submit only its health and medical sub-contracts to ETA for consent prior to contract award. Additionally, MTC Paul Simon's SOPs were approved by ETA when MTC was awarded the contract to operate MTC Paul Simon. If MTC Paul Simon sub-contracting execution is not consistent with its SOPs, then ETA is authorized by the FAR to withdraw MTC CPSR approval.

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Appendix B**Objective, Scope, Methodology, and Criteria**

Objective

Based on the responses of MTC and ETA to our draft report and subsequent communication, we revised our criteria to evaluate MTC Paul Simon's compliance with its own procurement SOPs and the SOPs consistency with the FAR requirement for ensuring best value to the government. As such, our audit objective was to answer the following question:

Did MTC Paul Simon ensure best value when awarding sub-contracts and claiming costs?

Scope

The audit covered sub-contracts managed and expenditures incurred by MTC Paul Simon from April 1, 2010, to March 31, 2011. We reviewed the 10 sub-contracts, totaling \$1,905,111, managed by MTC Paul Simon during this period. Furthermore, we reviewed invoices paid and associated with the 10 sub-contracts. In addition, we reviewed a statistical sample of 50 expenditures more than \$3,000, totaling \$622,244, from a universe of 117 expenditures totaling \$992,545. These expenditures were generally initiated by purchase orders and were separate items from the 10 sub-contracts we reviewed. The MTC contract to operate MTC Paul Simon was not included in our review because it was awarded by ETA. In addition, no MTC Paul Simon sub-contracts were awarded by ETA.

We performed field work at the MTC Paul Simon JCC located in Chicago, IL, where we reviewed files, supporting documents, and performed interviews. In addition, we interviewed the ETA contracting officer located in Chicago, IL.

We considered the internal control elements of control environment, risk assessment, control activities, information and communication, and monitoring during our planning and substantive audit phases.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on the audit objective.

Methodology

To accomplish the audit objective, we obtained an understanding of the FAR, and Job Corps' and MTC Paul Simon's procurement regulations and policies. We conducted

interviews with MTC Paul Simon officials responsible for procurement and invoice payment.

To assess MTC Paul Simon’s internal controls over procurement, we interviewed key center staff; reviewed applicable Job Corps requirements, including the Job Corps PRH, applicable sections of the FAR, contract provisions, and MTC Paul Simon’s SOP; analyzed the most recent Job Corps Regional Office Center Assessment and MTC’s most recent corporate center assessment; and performed a walkthrough of the procurement process. We identified and evaluated the internal controls that MTC Paul Simon, MTC, and Job Corps had in place over the monitoring and approval of sub-contracts as of August 2011.

Specifically, we obtained all supporting documents pertaining to the announcing, performing responsibility checks, awarding the contracting instrument, and payment of invoices of the 10 sub-contracts and 50 expenditures. We tested the completeness of the 10 sub-contract files by conducting a meeting with MTC Paul Simon’s contracting officer/purchasing agent and reviewing the contract files. We tested the completeness of the check register by verifying check dates that were issued during our audit period, by verifying that all checks were in sequential order, and by verifying that missing checks had been voided by MTC Paul Simon.

The universe used in our audit consisted of the 10 sub-contracts and the 117 expenditures more than \$3,000. We tested the 10 sub-contracts. For the expenditures, we stratified the universe into 7 strata. Each of the 7 strata was based on the dollar amount of the expenditures. The schedule below provides details on the range of expenditures, total number of expenditures, and selected expenditures within each strata.

Strata	Range of Checks	Number of Checks in the Strata	Number of Checks Selected For Audit
1	\$40,000 – \$52,000	4	4
2	\$20,000 – \$39,999	5	5
3	\$10,000 – \$19,999	13	9
4	\$7,000 – \$9,999	13	4
5	\$5,000 – \$6,999	23	8
6	\$4,000 – \$4,999	20	7
7	\$3,000 – \$3,999	39	13
Totals		117	50

For sub-contracts issued by MTC Paul Simon, we obtained the contract files and all supporting documentation provided by MTC Paul Simon. We reviewed the 10 sub-contracts, totaling \$1,905,111, managed by MTC Paul Simon during April 1, 2010, to March 31, 2011.

We tested each of the sub-contracts and expenditures⁸ for compliance, including awarding sub-contracts based on fair and open competition or justification of its absence, cost or price analysis, technical requirements, ability to comply with proposed performance and delivery schedules, and responsibility checks of past performance. We reviewed 100 percent of the invoices for the 3 medical sub-contracts and more than 50 percent of the invoices for the other 7 sub-contracts to determine whether payments were supported as required.

For purchase orders issued by MTC Paul Simon, we obtained the check register for the audit period. From the check register we excluded checks related to payroll, checks less than \$3,000, payments related to the ten sub-contracts reviewed, and payments for utilities. This left a universe of 117 expenditures. We then used statistical sampling to select a sample of 50 expenditures.

A performance audit includes an understanding of internal controls considered significant to the audit objective and testing compliance with significant laws, regulations, and other requirements. In planning and performing our audit, we considered whether internal controls significant to the audit were properly designed and placed in operation. This included reviewing MTC Paul Simon's policies and procedures related to procurement. We confirmed our understanding of these controls and procedures through interviews and documentation review and analysis. We evaluated internal controls used by MTC Paul Simon for reasonable assurance that the awarding of sub-contracts and payment of invoices were done according to federal and Job Corps requirements. Our consideration of MTC Paul Simon's internal controls for awarding of sub-contracts and payment of invoices would not necessarily disclose all matters that might be reportable conditions. Because of inherent limitations in internal controls, misstatements, losses, or noncompliance may nevertheless occur and not be detected.

To achieve the assignment's objective, we relied on the computer-processed data contained in MTC Paul Simon's check register. We assessed the reliability of the data by (1) performing various tests of required data elements, and (2) interviewing MTC Paul Simon financial officials knowledgeable of the data. Based on these tests and assessments, we concluded the data was sufficiently reliable to use in meeting the audit objective.

⁸We also reviewed expenditures associated with purchase orders and other documents procuring goods and services, the use of which is addressed in MTC Paul Simon's SOPs.

Criteria

We used the following criteria to perform this audit:

- Federal Acquisition Regulations,
- Job Corps Policy and Requirements Handbook,
- MTC Corporate Standard Operating Procedures, and
- MTC Paul Simon Standard Operating Procedures.

Specifically, FAR Subpart 44.302 requires ETA to determine the need for a Contractor's Purchasing System Review (CPSR) based on, but not limited to, the past performance of the contractor and dollar value of sub-contracts (generally \$25 million). FAR Subpart 44.301 states the objective of a CPSR is to evaluate the efficiency and effectiveness with which the contractor spends government funds and complies with government policy when sub-contracting. The review provides the Contracting Officer with a basis for granting, withholding, or withdrawing approval of the contractor's purchasing system.⁹ Furthermore, FAR Subpart 44.303 states, "The 13 considerations listed in FAR Subpart 44.202-2 for consent evaluation of particular sub-contracts also shall be used to evaluate the contractor's purchasing system, including the contractor's policies, procedures, and performance under that system. Special attention shall be given to:

- (a) The results of market research accomplished;
- (b) The degree of price competition obtained;
- (c) Pricing policies and techniques, including methods of obtaining certified cost or pricing data...;
- (d) Methods of evaluating sub-contractor responsibility, including the contractor's use of the Excluded Parties List System...;
- (g) Planning, award, and post-award management of major sub-contract programs...; and
- (j) Appropriateness of types of contracts used."

In addition, DOL policy for conducting CPSRs (Section 4.9) states that it is in the government's interest to perform CPSRs when a contractor's total combined business with Job Corps exceeds \$25 million. The policy further clarifies the center operators' responsibility to establish procurement policies and procedures that are consistent with the FAR. The DOL policy states that under the terms of center operator contracts, Contracting Officers are responsible for ensuring that contractors procure goods and services on behalf of the Job Corps program in conformance with the contract provisions and principles detailed in the FAR. Contracting officers can either review and consent to all sub-contracts for the contract, or may approve the contractor's purchasing system. The policy also states that the FAR allows for approval of purchasing systems that demonstrate compliance with FAR principles after a rigorous review of all purchasing manuals and procedures. Additionally, MTC's corporate Standard Operating

⁹ETA reviews each center operator's procurement systems every three years. If the procurement system is "approved," ETA contracting officials reduce their oversight of the center operator's procurement activities.

Procedures (SOP) require that its center processes be consistent with government regulations.¹⁰

¹⁰MTC SOP #13.01, General Purchasing Policy, dated January 1, 2011, Paragraph B.1.

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Appendix C

Acronyms

DOL	U.S. Department of Labor
ETA	Employment and Training Administration
FAR	Federal Acquisition Register
OIG	Office of Inspector General
MTC	Management Training Corporation
MTC Paul Simon	Paul Simon Job Corps Center as Operated by MTC
PRH	Policy and Requirements Handbook
SOP Standard	Operating Procedures
WIA	Workforce Investment Act
YCCS	Youth Connection Chartered School

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ETA Response to Draft Report

U.S. Department of Labor

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

OCT 24 2011

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

FROM: JANE OATES *Jane Oates*
Assistant Secretary

SUBJECT: OIG Draft Report No. 26-11-007-03-370,
"Management and Training Corporation Did Not Ensure Best
Value in Awarding Subcontracts at the Paul Simon Job Corps
Center"

This memorandum responds to the subject draft audit report, dated September 23, 2011, Draft OIG Audit Report No. 26-11-007-03-370, "Management and Training Corporation Did Not Ensure Best Value In Awarding Subcontracts at the Paul Simon Job Corps Center." We appreciate the opportunity to provide input to this draft audit report and reiterate that Job Corps center operators are not subject to all aspects of the Federal Acquisition Regulation (FAR), but are accountable to the 13 considerations identified in FAR Part 44.202-2, the subcontracting consent limitations identified in FAR 44.203, and an evaluation of contractor's purchasing system under FAR 44.303.

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

OIG Recommendation 1: Strengthen center SOPs pertaining to procurement. Revisions need to include the required documentation and evaluator signatures and the specific steps to ensure all subcontracts and expenditures are advertised, evaluated, awarded, and costs supported as required by the FAR.

Response: Management accepts this recommendation in part.

Management and Training Corporation's (MTC) procurement policies minimally must meet the requirements of FAR Part 44.303 and FAR Part 52.244-5. MTC's Procurement Standard Operating Procedures (SOP) 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. MTC's Contractor Purchasing System was approved in 2010. A copy of the final report and approval memo are available upon request

We consider this recommendation resolved.

OIG Recommendation 2: Repay questioned costs totaling \$1,101,414. 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	Subcontracts above \$25,000 / amount of questioned costs	Expenditures above \$3,000 / amount of questioned costs
(a) Sub-contract award not based on responsibility checks FAR Subpart 44.202-2 (a) (7) and (11)	8 of 10 (80%) \$1,101,414	Not applicable
(b) Inadequate sole source justification FAR Subpart 44.202-2 (a) (7) and (11)	Not applicable	Sample: 16 of 50 (32%) \$82,359
(c) Improper claim to DOL on sole sourced purchases FAR Subpart 44.202-2 (a) (7) and (11)	Not applicable	Sample: 7 of 50 (8%) \$141,939
Total.....\$1,325,712	\$1,101,414	Sample: 23 of 50 (48%) \$224,298

- (a) We agree with the OIG in part. However, the OIG needs to clarify specifically what is meant by "award not based on required responsibility checks" as the items identified in the audit summary as responsibility checks are not responsibility matters but appear to be evaluation criteria or factors. The FAR requires that the contractor have a sound basis for awarding a contract to a responsible vendor.
- (b) We agree with the OIG. Contractors are required to prepare justifications for sole source awards and this must be documented in the contract file.
- (c) We agree with the OIG. OCM will ensure the COTRS advised OCM Contracting Officers of instances of disallowed cost and potential invalid invoice/voucher submission. OCM will encourage the Job Corps Program to conduct a thorough audit of MTC's Paul Simon JCC financial records.

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 MTC provides appropriate procurement training to staff responsible for purchasing center items and awarding center support subcontracts.

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

We consider this recommendation resolved.

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

Response: Management accepts this recommendation in part.

OCM will ensure MTC complies with regulatory requirements. Further, OCM will work with OJC to provide tools to COTRs/Project Managers to assist in the monitoring of the purchasing practices of MTC at the Paul Simon Job Corps Center.

We consider this recommendation resolved.

OIG Recommendation 6: Review all future MTC Paul Simon JCC subcontracts for FAR compliance prior to approval.

Response: Management accepts this recommendation in part

MTC, operator of Paul Simon JCC, has an approved purchasing system; as such, the majority of MTC subcontracts do not require Contracting Officer (CO) approval prior to the contract's execution. However, OCM will provide additional tools to regional COs to ensure a thorough review of potential subcontracts and will require MTC to submit subcontract agreements for the Paul Simon Job Corps Center to the Regional Contracting Officer. Further, OCM will modify the MTC CPSR approval memo to reflect the exception for the Paul Simon JCC subcontracts.

4

The Regional CO's review of subcontracts and purchase agreements will ensure: 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

MTC Response to Draft Report



Lyle J. Parry
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October 19, 2011

Ray Armada
Office of Inspector General
U.S. Department of Labor
200 Constitution Avenue, N.W.
Room S-5506
Washington, D.C. 20210

Re: Response to Draft Audit Report – Audit of Paul Simon Chicago Job Corps Center

Dear Mr. Armada:

Management & Training Corporation (MTC) appreciates the opportunity to respond to the September 2011 *Draft Audit Report* issued by the Office of Audit, Office of Inspector General (OIG), U.S. Department of Labor (DOL), regarding the Paul Simon Chicago Jobs Corps Center ("Paul Simon Chicago JCC"). You indicated that your audit objective was to determine "Did Paul Simon Chicago award contracts and claim costs in accordance with the Federal Acquisition Regulations (FAR)?" As a preface to our comments and in reference to your audit objective as stated in the audit report, we want to make clear what our understanding is of the FAR. In general the FAR was written for and applies to government agencies.

BACKGROUND

The August 15, 2011 Statement of Fact (SOF) audit of Paul Simon Chicago JCC, states that it examined whether the Paul Simon Chicago JCC "award[ed] sub-contracts and claim[ed] costs in accordance with [the] FAR." The FAR provisions cited by the OIG in the SOF, however, do not apply to the awarding of subcontracts by Paul Simon Chicago JCC. The OIG's assertion to the contrary is an astonishing and dramatic departure from well settled law and practice. From there the OIG changed citations for its next reports but has basically continued to try to follow the same premise.

THE OIG's FAULTY PREMISE

The OIG's Report is based entirely on the faulty premise that MTC was required to comply with FAR requirements that do not exist. The OIG insists that MTC, as a government contractor awarding subcontracts, is subject to the same procedural requirements the FAR imposes on the government when it awards prime contracts. But, as pointed out by MTC and numerous other Job Corps Center operators, *this is not the law*. Because the OIG continues to set for itself an erroneous objective, it ends up with an insupportable and erroneous finding:

OIG Objective — Did MTC Paul Simon award sub-contracts and claim costs in accordance with FAR?

OIG Finding — MTC Paul Simon did not comply with specific sections of the FAR when awarding sub-contracts and purchase orders.¹

- MTC did not comply with specific sections of the FAR when awarding purchase orders to vendors for 23 of the 50 expenditures over \$3,000 statistically selected.
- MTC had not established a control environment, including procedures and oversight, to ensure compliance with specific sections of the FAR. Also, neither ETA contracting personnel nor Job Corps regional staff adequately monitored MTC Paul Simon's procurement activities for compliance with contract-specific sections of the FAR.

According to the OIG, the FAR is applicable to MTC – as a contracted center operator – because its compliance is required by the PRH and by the MTC Paul Simon contract.

It is true, as cited by the OIG, that MTC's contract to operate Paul Simon states that "[t]he center shall establish systems to procure property, services, and supplies in a cost-efficient and environmentally-friendly manner in accordance with government policies. The contractor shall also establish systems to provide procedures for receipt and accountability of government-owned property, material, and supplies, in accordance with PRH 5.6." This quoted section, however, offers *nothing* to support the OIG's statement that "the FAR is applicable to contracted center operators because its compliance is required ... by the MTC Paul Simon contract."

And, while it is also true, as cited by the OIG, that the PRH section 5.6 R1 states "Center operators and OA/CTS contractors shall follow all applicable procurement regulations, to include those contained in the FAR," there is, again, nothing in this statement that supports the OIG's position regarding which FAR provisions are "applicable" to Center operators' subcontracting activities and how such provisions are to be applied.

Against this paltry backdrop, the current OIG Report takes a giant leap and sets forth a new set of "[s]pecific FAR requirements for centers procuring supplies or services and claiming costs." The specific FAR sections upon which the OIG now relies are set out below in regular text. Curiously, the OIG omits portions of the cited FAR sections – the portions that appear below in bold italics – presumably because such sections undercut and render insupportable the position taken by the OIG here:

- FAR Subpart 52.244-5, *Competition in Subcontracting*
FAR Subpart 52.244-5 as prescribed in FAR Subpart 44.204(c) –
The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract.
- FAR Part 44, *Subcontracting Policies and Procedures*

¹ The new Draft Report replaces the previously unidentified FAR provisions relied upon by the OIG in claiming MTC was non-compliant, with citations to Part 44.

FAR SUBPART 44.2 CONSENT TO SUBCONTRACTS²

44.202-2 Considerations.

(n) The contracting officer responsible for consent must, at a minimum review the request and supporting data and consider the following:

FAR Subpart 44.202-2(a)(5) – Obtain adequate price competition or properly justify its absence. [In fact, this section actually asks the C.O. to consider “*Was adequate price competition obtained or its absence properly justified?*”]

FAR Subpart 44.202-2(a)(7) and FAR Subpart 9.104-1 – Obtain a sound basis for selecting and determining the responsibility of the particular subcontractor, including past performance, technical requirements, and ability to comply with proposed performance and delivery schedules. [In fact, this section actually asks the C.O. to consider “*Does the contractor have a sound basis for selecting and determining the responsibility of the particular contractor?*” and makes no reference whatsoever to FAR 9.104-1].

FAR Subpart 44.202-2(a)(8) – Perform adequate cost or price analysis or price comparisons and obtain certified cost or pricing data and data other than certified cost or pricing data. [Again, this section actually asks the C.O. to consider “*Has the contractor performed adequate cost or price analysis or price comparisons and obtained certified cost or pricing data and data other than certified cost or pricing data?*”]

FAR Subpart 44.202(a)(9) – The proposed sub-contract type should be appropriate for the risks involved and be consistent with current policy. [And again, this section actually asks the contracting officer to consider “*Is the proposed subcontract type appropriate for the risks involved and consistent with current policy?*”]

FAR Subpart 44.202-2(a)(11) – Adequately and reasonably translate prime contract technical requirements into subcontract requirements. [And finally, again, this section actually asks the contracting officer to consider “*Has the contractor adequately and reasonably translated prime contract technical requirements into subcontract requirements?*”]

- FAR Subpart 52.216-7, *Allowable Cost and Payment*

Subpart 52.216-7(a) *Invoicing* (sub-paragraph 1) – The Government will make payments to the Contractor in accordance with FAR Subpart 31.2.

- FAR Subpart 31.2 *Contracts with Commercial Organization*

² It is critical to note that SUBPART 44.2 applies to situations where contracting officer consent to subcontracting is required. This is only true for a very small portion of MTC's subcontracting activities.

Subpart 31.201-2 (d) *Determining Allowability* – A contractor is responsible for accounting for costs appropriately and for maintaining records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, and are allocable to the contract. The contracting officer may disallow all or part of a claimed cost that is inadequately supported.

The new Draft Report continues to be based upon an entirely faulty premise regarding the application of the cited Federal Acquisition Regulations and, therefore, cannot stand.

THE FAR PROVISIONS CITED BY THE OIG DO NOT IMPOSE REQUIREMENTS ON MTC

FAR Subpart 52.244-5. A contractor such as MTC is required to select subcontractors on a competitive basis to the maximum *practical* extent *consistent* with the *objectives and requirements* of its contract. This section does not mandate full and open competition in all or even most instances, nor does it impose all or any of the requirements of Part 6 on contractors in terms of the available bases and/or justification for limited or non-competitive awards.

FAR Subpart 44.2. FAR Subpart 44.2 does not impose specific requirements on MTC, nor are the contents of this Subpart contractually flowed-down to MTC. FAR Subpart 44.2 addresses the situation where a prime contractor is required to "notify" the contracting officer of, and obtain the contracting officer's "consent" to, the prime contractor's award of a particular subcontract or subcontracts. This "consent" process, where applicable, is very general. Said another way, FAR Subpart 44.2 does not specify requirements subcontracts must meet to obtain contracting officer consent, it sets forth "considerations". Government consent to subcontracts, when required, is clearly intended to be a flexible process in which the contracting officer has broad discretion.

FAR 44.202-2(a) begins as follows: "The contracting officer responsible for consent must, at a minimum, review the request and supporting data and *consider* the following:" (Emphasis added). The FAR goes on to list thirteen questions for the contracting officer to consider, five of which are cited by the OIG as the basis for its findings here, namely: (a)(5) "Was adequate price competition obtained or its absence properly justified?"; (a)(7) "Does the contractor have a sound basis for selecting and determining the responsibility of the particular subcontractor?"; (a)(8) "Has the contractor performed adequate cost or price analysis or price comparisons and obtained certified cost or pricing data and data other than certified cost or pricing data"; (a)(9) "Is the proposed subcontract type appropriate for the risks involved and consistent with current policy?"; 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. Yet on the basis of these general considerations the OIG now seeks to impose on contracted Job Corps Center operators a long list of new obligations.

Only 4 subcontracts (Professional Health Services only, based on the contract requirements) at Paul Simon were subject to the FAR Part 44.2 "consent" requirements *imposed upon contracting officers*. And the files confirm that these were expressly consented to by the DOL contracting officer. There is no indication that the contracting officer did not "consider" all relevant factors in this process and, even if

there was, such failure to consider on the part of the contracting officer would not constitute non-compliance by MTC.³

FAR 9.104-1. The OIG also cites to FAR 9.104-1 as applicable to MTC's subcontracting activities. This provision sets forth general standards for determining whether a prospective contractor is responsible. The policy underlying this provision is found in FAR 9.103(b): "No purchase or award shall be made unless the *contracting officer* makes an affirmative determination of responsibility." As is the case with the cited consent provisions, FAR 9.104 applies to the *contracting officer's* selection of prime contractors. It does not suggest, let alone mandate, procedures that a prime contractor must follow in selecting its subcontractors. Nor was this FAR provision contractually flowed-down to MTC in its Paul Simon contract.

FAR Subpart 52.216-7 & FAR Subpart 31.2. MTC objects to the OIG's methodology for determining the amount of questioned costs. The OIG questions the entire subcontract value of any subcontract awarded using procedures that it finds "noncompliant." This is wrong. In each instance cited in the audit, the Job Corps received valuable goods and or services in return for the payment made (through MTC) to the subcontractor. The hypothetical detriment to the Job Corps, if any, of MTC's theoretical "noncompliance" cannot and does not mean the Job Corps did not receive significant value from the subcontractor costs. Indeed the value of any alleged noncompliance, if such actually existed, would be at most a small fraction of the subcontract value.

THE OIG'S REPORT CANNOT STAND

MTC opposes the OIG's draft findings, and the manner in which it has gone about reaching these findings. In this regard it is important to note that MTC was denied an exit conference regarding the OIG's proposed findings, allegedly because of the extent of disagreement between the parties. The existence of a strong difference of opinion on the issues central to the OIG's findings is a remarkable and particularly unacceptable reason for denying a contractor a conference.

MTC has taken all the necessary and appropriate steps to ensure that best value is received by the government in connection with its subcontracting activities for the operation of the Paul Simon Job Corps Center. Accordingly, MTC disputes the OIG's findings, as well as the recommendation that MTC repay the questioned costs, particularly since the OIG questions MTC's subcontracting costs based upon "non-compliance with the FAR."

MTC has an approved purchasing system. Where such a system is required, Part 44.301 directs the contracting officer to "evaluate the efficiency and effectiveness with which the contractor spends Government funds and complies with Government policy when subcontracting" under such system. This evaluation looks at market research, degree of price competition, pricing policies and techniques, methods for evaluating subcontractor responsibility, CAS compliance and management, among other elements. The contracting officer does *not* require or examine whether a contractor conducts its subcontracting activities as an agency would be required to: in strict compliance with the FAR, *nor can the OIG*.

³ It is also important to note that MTC has eight (8) open annual purchase orders – basically blanket purchase agreements – at Paul Simon Chicago. The "consent" process does not apply to these types of arrangements, unless they are for Professional Health Services. Four of the eight (the remaining four purchase orders are for Professional Health Services and contracting officer's consent was obtained) allegedly improper expenditures noted in the Draft Report are blanket purchase-type arrangements – agreements that cover future purchase orders that may be issued. These are not contracts. FAR 16.703(a)(3) ("A basic ordering agreement is not a contract"); 16.702(a)(2) ("A basic agreement is not a contract."); *Crewzers FireCrew Transport, Inc. v. United States*, US Court of Federal Claims No.10-819C, January 28, 2011 ("It is well established that BPAs are not contracts").

The specific bases and support for MTC's opposition are set out below. Please note that much of what is contained in this Response has already been provided, in writing, to the OIG. Inexplicably, however, despite MTC's detailed and irrefutable support for almost every cost challenged by the OIG, the latest Draft Report contains the same or similar insupportable recitations and conclusions as the previous drafts. In other words, it appears the OIG has not taken into account any of the substantial and irrefutable material submitted to date by MTC. And, in those rare instances where such information has been taken into account, the current Draft Report simply raises new and equally insupportable grounds for challenging MTC's subcontracting activities and costs. Please note that MTC's prior filings are incorporated, by reference, in their entirety here.

MTC Paul Simon's Non-Compliance Resulted in \$1.1 Million in Questioned Cost

OIG Finding - Sub-contracts where FAR Non-compliance Resulted In Questioned Costs

The following are examples cited by the OIG of non-compliance with the applicable sections of the FAR for the sub-contracts followed by MTC's response.

Cited Example 1 – Rush University

OIG Statement – Rush University Subcontract

In 2008, MTC Paul Simon awarded a 2 year base plus 3 option years \$400,848 physician services contract to Rush University. Rush University had been Paul Simon's physician services provider under the last center operator. In awarding the sub-contract, MTC Paul Simon requested bids on the FedBizOpps website and received two bids. Paul Simon awarded the sub-contract to Rush University even though they were the higher bidder. The center's procurement records did not note why the lower bidder was not awarded the sub-contract. (The 2 base years plus 1 option year had expired based on our audit period for a total of \$234,192, which represented 58% of the contract dollars expended.)

MTC Paul Simon did not comply with the FAR Subparts 44.202-2(a)(7) and (8), and FAR Subpart 9.104-1 when awarding the sub-contract to Rush University. A cost or price analysis was not performed, a responsibility check of the sub-contractors ability to satisfactorily perform the contract was not performed, and the center's justification for selecting a higher bid was documented, but not adequate. As such, we questioned the entire amount of the sub-contract expended \$234,192.

MTC Response – Rush University Subcontract

MTC disagrees with this finding. The OIG cited FAR 9.104-1 as applicable to MTC's subcontracting activities. This provision sets forth general standards for determining whether a prospective contractor is responsible. The policy underlying this provision is found in FAR 9.103(b): "No purchase or award shall be made unless the *contracting officer* makes an affirmative determination of responsibility." As is the case with the cited consent provisions, FAR 9.104 applies to the *contracting officer's* selection of prime contractors. It does not suggest, let alone mandate, procedures that a prime contractors must follow in selecting its subcontractors. Nor was this FAR provision contractually flowed-down to MTC in its Paul Simon Chicago contract.

The contracting officer must review and consider FAR Subpart 44.202-2(a)(7) and FAR Subpart 44.202-2(a)(8) before providing consent to subcontracts. This contract was approved by MTC's Regional Contracting Officer and consent was obtained per FAR Subpart 44.2, "Consent to Subcontracts." There is nothing to indicate the contracting officer did not perform his or her requirements adequately although the OIG would imply otherwise. Again the items being cited are requirements of the contracting officer and not the contractor.

The responsibility checks MTC performed included a valid license, valid certificate of insurances, and résumé showing past performance of the medical provider with approximately 13 years successful experience with the Job Corps center were considerations in awarding this subcontract as stated in the center's justification below. MTC also did an Excluded Parties List System (EPLS) check of this provider to verify that the provider was not on the government's debarred list. MTC followed our DOL approved Purchasing Policies/SOPs. These responsibility checks and EPLS verification were provided to the contracting officer for consideration during the consent evaluation process with this subcontract.

Per the following justification summary, which was in the contract file submitted to OIG, there was a legitimate justification for awarding the contract to the next highest bidder. We feel the following justification summary is more than adequate to justify vendor selection.

This subcontract was identified as a provider in MTC's original Paul Simon Chicago Job Corps Center operations proposal, which was reviewed and approved during the proposal process and incorporated into the prime contract.

Justification Summary:

Recommendation for decision regarding contracts for Physician Consultant:

Center Physician

Dr. Joyce for Center Physician- I recommend retaining Dr. Joyce. She has over 13 years of experience working with Job Corps. Dr. Joyce's understanding of the Job Corps program allows her to practice quality medicine with a focus on keeping within the cost of the medical budget. Her specialty is in adolescent medicine with Board Certification. Dr. Joyce works with a group of physicians at Rush University Medical Center where physician coverage is available if necessary in her absence, which is rare. Her community linkages provide added benefits to the students she serves. The MTC and DOL assessments in 2007 were a reflection of the outstanding performance of our Center Physician. In an effort to continue to meet and exceed program requirements Dr. Joyce should be retained. We are focusing on student and staff retention by stabilizing the turnover rate in the health services department.

There is a shortage of healthcare providers as demonstrated by the single proposal received for the Center Physician position. The cost of the one bid submitted is lower (bid \$92) than the cost of the current physician (bid \$115). The lower bid is reflective of the bidding physician's qualifications. The bidding physician is underqualified in comparison to the current center physician. The bidding physician lacks independent medical practice in the U.S. The bid was submitted without current licenses or liability insurance to review. The physician is newly trained (since 2005) in Nigeria. I am unsure if the physician has admitting privileges to any hospital. The physician is currently a patient care volunteer at St. Joseph Hospital. This can pose a potential problem with lack of follow up for total patient care. The physician lacks board certification, an added credential to demonstrate continuation of education and current competency in practice. Having limited experience can be costly for the center when it comes to the treatment approach. Lack of experience can present a significant increase in cost as it relates to the medical budget.

Cited Example 2 – Northwest Neuropsychology*OIG Statement – Northwest Neuropsychology Subcontract*

In 2008, MTC Paul Simon awarded a 2-year base plus 3 option years \$413,934, mental health services contract to Northwest Neuropsychology. In awarding the sub-contract, MTC Paul Simon requested bids on the FedBizOps website and received two bids. Paul Simon awarded the sub-contract to Northwest Neuropsychology even though they were the higher bidder. The center's records did not state why the lower bidder was not awarded the sub-contract (The 2 bases plus 1 option year had expired based on our audit period for a totaled of \$225,476).

MTC Paul Simon did not comply with the FAR Subparts 44.202-2(a)(7) and (8), and FAR Subpart 9.104-1 when awarding the sub-contract to Northwest Neuropsychology. A cost or price analysis was not performed, a responsibility check of the sub-contractors ability to satisfactorily perform the contract was not performed, and the center's justification for selecting a higher bid was documented, but not adequate. As such, we questioned the entire amount of the sub-contract expended \$225,476.

MTC's Response – Northwest Neuropsychology Subcontract

MTC disagrees with this finding. The OIG cited FAR 9.104-1 as applicable to MTC's subcontracting activities. This provision sets forth general standards for determining whether a prospective contractor is responsible. The policy underlying this provision is found in FAR 9.103(b): "No purchase or award shall be made unless the *contracting officer* makes an affirmative determination of responsibility." As is the case with the cited consent provisions, FAR 9.104 applies to the *contracting officer's* selection of prime contractors. It does not suggest, let alone mandate, procedures that a prime contractors must follow in selecting its subcontractors. Nor was this FAR provision contractually flowed-down to MTC in its Paul Simon Chicago contract.

The contracting officer must review and consider FAR Subpart 44.202-2(a)(7) and FAR Subpart 44.202-2(a)(8) before providing consent to subcontracts. This contract was approved by MTC's Regional Contracting Officer and consent was obtained per FAR Subpart 44.2, "Consent to Subcontracts." There is nothing to indicate the contracting officer did not perform his or her requirements adequately although the OIG would imply otherwise. Again the items being cited are requirements of the contracting officer and not the contractor.

The responsibility checks MTC performed included a valid license, valid certificate of insurances, and résumé showing past performance of the medical provider with approximately 19 years successful experience in the Mental Health field were considerations in awarding this subcontract, as stated in the center's justification below. MTC also did an EPLS check of this provider to verify that the provider was not on the government's debarred list. MTC followed our DOL approved Purchasing Policies/SOPs. These responsibility checks and EPLS verification were provided to the contracting officer for consideration during the consent evaluation process with this subcontract.

This subcontract was identified as a provider in MTC's original Paul Simon Chicago Job Corps Center operations proposal, which was reviewed and approved during the proposal process and incorporated into the prime contract.

Per the following justification summary, which was in the contract file submitted to OIG, there was a legitimate justification for awarding the contract to the next highest bidder. We feel the following justification summary is more than adequate to justify vendor selection of Dr. Alexander Eschbach who is the owner and sole proprietor of Northwest Neuropsychology.

*Justification Summary:***Recommendation for decision regarding contract for Center Mental Health Consultant:****Center Mental Health Consultant**

Dr. Eschbach for CMHC- He is a psychologist with over 19 years experience. He has identified and utilized assessment tools to assist in the retention of our rapidly growing mental health student population. He has established relationships with community linkages which provide added benefits to the students. He is an excellent trainer and conducts a variety of training sessions throughout the year. He has been a vital member of the Wellness To Employability Committee and was selected as a presenter at the National Wellness Conference 2003. The MTC and DOL assessments in 2007 were a reflection of the outstanding performance of our Center Mental Health Consultant. He is vast experience working with the SCL-90 or the TOVA (current assessment tools used by psychologist to assist with screening and retention as it relates to emotional and behavioral well being of Job Corps students). In an effort to continue to meet and exceed program requirements the current CMHC should be retained.

There was only one proposal received from a psychologist. The cost of the bid submitted is lower (bid \$98) than the cost of the current CMHC (\$103). The bidding psychologist lacks experience practicing in her profession due limited time in the field (since 2004). Also, the bidding psychologist is under qualified in comparison to the current Center Mental Health Consultant. She lacks experience working with adolescents in this type of setting. The bid was submitted without current license or liability insurance to review. Having limited experience can be costly for the center when it comes to the treatment approach. Lack of experience can present a significant increase in cost as it relates to the medical budget.

Cited Example 3 – Ashburn*OIG Statement – Ashburn Subcontract*

In 2008, MTC Paul Simon awarded a 2-year base plus 3 option years \$395,515, dental services contract to Ashburn. In awarding the sub-contract, MTC Paul Simon requested bids on the Fed BizOps website and received only one bid. Paul Simon awarded the sub-contract to Ashburn the only bidder. (The 2 base years plus 1 option year had expired during on our audit period for a total of \$236,496.)

MTC Paul Simon did not comply with the FAR Subparts 44.202-2(a)(7) and (8), and FAR Subpart 9.104-1 when awarding the sub-contract to Ashburn. Neither a cost or price analysis nor a responsibility check of the sub-contractors ability to satisfactorily perform the contract was performed. As such, we questioned the entire amount of the sub-contract expended \$236,496.

MTC's Response – Ashburn Subcontract

MTC disagrees with this finding. The OIG cited FAR 9.104-1 as applicable to MTC's subcontracting activities. This provision sets forth general standards for determining whether a prospective contractor

is responsible. The policy underlying this provision is found in FAR 9.103(b): "No purchase or award shall be made unless the *contracting officer* makes an affirmative determination of responsibility." As is the case with the cited consent provisions, FAR 9.104 applies to the *contracting officer's* selection of prime contractors. It does not suggest, let alone mandate, procedures that a prime contractors must follow in selecting its subcontractors. Nor was this FAR provision contractually flowed-down to MTC in its Paul Simon Chicago contract.

The contracting officer must review and consider FAR Subpart 44.202-2(a)(7) and FAR Subpart 44.202-2(a)(8) before providing consent to subcontracts. This contract was approved by MTC's Regional Contracting Officer and consent was obtained per FAR Subpart 44.2, "Consent to Subcontracts." There is nothing to indicate the contracting officer did not perform his or her requirements adequately although the OIG would imply otherwise. Again the items being cited are requirements of the contracting officer and not the contractor.

The responsibility checks MTC performed included a valid license, valid certificate of insurances, and résumé showing past performance of the medical provider with approximately 11 years successful experience with the center were considerations in awarding this subcontract, as stated in the center's justification below. MTC also did an EPLS check of this provider to verify that the provider was not on the government's debarred list. MTC followed our DOL approved Purchasing Policies/SOPs. These responsibility checks and EPLS verification were provided to the contracting officer for consideration during the consent evaluation process with this subcontract.

This subcontract was identified as a provider in MTC's original Paul Simon Chicago Job Corps Center operations proposal, which was reviewed and approved during the proposal process and incorporated into the prime contract.

The following is a summary of specific FAR non-compliance for the eight sub-contracts for which the OIG questioned costs:

Sub-Contracts with FAR Non-Compliance

Vendor Name	Amount of Contract*	Good or Service Provided	FAR Non-Compliance Issues
MedClean	\$214,446	Linen Services	<ul style="list-style-type: none"> • Responsibility checks not developed and used • Cost or Price Analysis was not conducted or documented
Groot Industries	103,247	Waste Management Services	<ul style="list-style-type: none"> • Responsibility checks not developed and used • Cost or Price Analysis was not conducted or documented
Tropical Optical	27,177	Optometry	<ul style="list-style-type: none"> • Responsibility checks not developed and used • Cost or Price Analysis was not conducted or documented
Petty Exterminating	13,788	Exterminating Services	<ul style="list-style-type: none"> • Responsibility checks not developed and used • Cost or Price Analysis was not conducted or documented
Chicago Technology	46,592	Maintenance Agreement for Printers	<ul style="list-style-type: none"> • Responsibility checks not developed and used • Cost or Price Analysis was not conducted or documented
Total	\$405,250		

MTC General Response:

MTC disagrees with the above findings. The OIG cited FAR 9.104-1 as applicable to MTC's subcontracting activities. This provision sets forth general standards for determining whether a prospective contractor is responsible. The policy underlying this provision is found in FAR 9.103(b): "No purchase or award shall be made unless the *contracting officer* makes an affirmative determination of responsibility." As is the case with the cited consent provisions, FAR 9.104 applies to the *contracting officer's* selection of prime contractors. It does not suggest, let alone mandate, procedures that a prime contractors must follow in selecting its subcontractors. Nor was this FAR provision contractually flowed-down to MTC in its Paul Simon Chicago contract.

The contracting officer must review and consider FAR Subpart 44.202-2(a)(7) and FAR Subpart 44.202-2(a)(8) before providing consent to subcontracts. This contract was approved by MTC's Regional Contracting Officer and consent was obtained per FAR Subpart 44.2, "Consent to Subcontracts." There is nothing to indicate the contracting officer did not perform his or her requirements adequately although the OIG would imply otherwise. Again the items being cited are requirements of the contracting officer and not the contractor.

Again the FAR clauses being cited are requirements of the contracting officer and not the contractor. The contracting officer must review and consider FAR Subpart 44.202-2(a)(7) and (8) before providing consent to subcontracts. Due to the various types of these purchases and the fact that MTC has a Contractor's Purchasing System Review (CPSR) certification, the contracting officer was not required to provide consent on all of the subcontracts noted above. However, during the CPSR process when the contracting officer evaluated MTC's Purchasing Policies and Procedures, the contracting officer considered the FAR Subpart 44.202-2 and deemed MTC's Purchasing Policies and Procedures acceptable and therefore approved them. Approved DOL consent forms were obtained for Tropical Optical and MedClean.

See pages 6-9 for MTC's response regarding Rush University, Northwest Neuropsychology, and Ashburn. Below is specific information for five of the sub-contracts identified in the table above.

OIG Finding - Responsibility checks not developed and used*MTC Response - Responsibility checks not developed and used*

- MedClean's responsibility check included a valid license, a valid certificate of insurance, and they were the incumbent vendors with a proven past performance record on center.
- Tropical Optical's responsibility check included a valid license, a valid certificate of insurance, and they were the incumbent vendors with a proven past performance record on center.
- Petty Exterminating's responsibility check included a valid license, a valid certificate of insurance, and they were the incumbent vendors with a proven past performance record on center.
- Groot's responsibility check included a valid license, a valid Certificate of insurances, and Company Profile received showing experience in trash services in similar settings.
- Chicago Office Technology's responsibility check included valid license, valid Certificate of insurances, and Company Profile received showing experience in copier maintenance in similar settings.

Per MTC's DOL approved policies, EPLS checks were performed on all of the above vendors to verify that the provider was not on the government's debarred list. These were provided to the auditors with the copy of the files. These responsibility checks and EPLS verification were provided to the contracting officer for consideration during the consent evaluation process with each subcontract.

OIG Finding - Cost or Price Analysis was not conducted or documented

MTC Response:

- MedClean, Petty Exterminating and Chicago Technology were awarded to the lowest bidder after price comparison with the other bids received which we feel this to be adequate price and justification for award.
- Groot Industries and Tropical Optical were awarded to the only responsive bidder and price was evaluated against the previous prime contract. Tropical Optical was the previous vendor and the pricing in the new contract was the same as the last option year of the previous subcontract. In fact Tropical Optical has held that price for the first 3 years of the new contract. Groot Industries was compared against the previous vendor (Allied Waste) and the pricing for Groot Industries was comparable.

OIG Finding - Some Invoice Payments Lacked Adequate Supporting Documentation

As required by FAR Subpart 31.201-2, MTC Paul Simon did not obtain required supporting documentation prior to payment for three of the sub-contracts we reviewed. For the three physician sub-contracts, documentation required by the contract to support billed hours were not obtained and reviewed prior to payment. The three doctors had billed hours that were not supported totaling \$63,918, 72,536 and \$77,565, respectively. In total, \$214,020 in payments lacked adequate supporting documentation. However, these costs were already included in the \$1.1 million we questioned because the sub-contracts were improperly awarded.

MTC Response:

MTC disagrees with this finding. This finding indicates that three of the subcontracts did not have adequate documentation to support invoice payments. All three of those subcontracts relate to medical services. The SOF states "invoices were not properly supported with timesheets for payment". The contracts do not require timesheets to support billed medical hours (Ashburn Dental Associates, Rush University Medical Center and Northwest Neuropsychology)". The subcontract paragraph on invoicing is as follows: The contractor shall submit to MTC, on a monthly basis, an invoice for services provided during the covered billing period.

The invoice shall include, at a minimum:

- Breakdown of hours worked
- Date(s) services provided
- Hourly rate for individual services, extended unit price and total
- Invoice number and date

The finding states timesheets are required. We disagree with this finding as there is no specific requirement for timesheets. This must be an interpretation of the auditor as it is not a requirement of the subcontract. Each invoice includes a breakdown of hours worked; the date or range of dates the services were provided; the hourly rate for the individual services with extended unit price and total; and invoice number and date. For internal control purposes we maintain logs of students who receive medical services. The invoices are approved by the medical support staff who validate the time and services performed. There is definitely adequate documentation to support these payments.

OIG Finding - Expenditures above \$3,000 That Resulted In Questioned Costs**OIG Statement:**

As previously noted, MTC Paul Simon did not comply with applicable sections of the FAR when awarding purchase orders to vendors for 23 of the 50 expenditures above \$3,000 tested. For 16 expenditures, MTC Paul Simon did not adequately justify sole source procurement as required by the FAR, and for 7 expenditures the center improperly submitted denied grant costs for sole source purchases. The following summarizes each type of non-compliance:

- *Inadequate sole-source justification* — From our sample of 50 expenditures, MTC Paul Simon sole-sourced 16 purchases. In all instances the center did not document justification for the sole source purchases. As such, MTC Paul Simon did not provide assurance that no other responsible party existed as required by FAR Subpart 44.202-2(a)5; that the center developed and used responsibility checks to ensure the vendor could satisfactorily deliver the goods or services as required by FAR Subpart 44.202-2(a)7; or that cost or price analysis was performed to ensure fair pricing as required by FAR Subpart 44.202(a)(8). As such, we questioned the \$82,359 paid to vendors for the 16 expenditures.

MTC Response:

The vast majority of the OIG's sample is made of up individualized checks for multiple invoices on each check. Each invoice is then broken down into individual purchases. These invoices, for example, consist of multiple students' college tuition or individual persons to fill temporary staffing positions. Each of these purchases are well under the OIG's \$3,000 threshold.

The center has seven educational MOU agreements with the seven local city colleges which all have the same student tuition. The students determine which program they want to attend based on the class schedules provided by the colleges (i.e., for medical the student would attend Malcolm X; or for Criminal Justice the student would attend Richard Daily; Samland offers CNA training for those students who score low on admissions test and will not be accepted by Malcolm X.) MTC verifies that pricing is the same at each college. Usually separate invoices are provided by the colleges for each student attending, but these specific charges were lumped together. Sole source justification is not required because the center has MOUs with all seven city colleges at the same tuition.

OIG Statement:

- *Improperly submitted grant costs* - MTC Paul Simon claimed \$141,940 for seven expenditures related to a grant awarded to the center by the city of Chicago. In accordance with FAR Subpart 44.202-2(a)(7) and FAR Subpart 9.104-1, MTC should have conducted fair and open competition and awarded a purchasing instrument appropriate to the circumstances. Under the grant, the city of Chicago reimbursed MTC Paul Simon for academic training provided to Job Corps students by the Youth Connection Charter School (YCCS), a Chicago Public Schools System charter school program located at MTC Paul Simon. According to MTC, these training costs were covered solely by the grant and were not charged to Job Corps. We found that the city of Chicago denied MTC Paul Simon's claims for the seven expenditures we reviewed because the center missed voucher submission cutoff dates, spent more than the available grant funds, and claimed building improvement costs to redo work for which the city had paid the previous year. MTC Paul Simon then improperly claimed the costs on expense reports submitted to Job Corps.

We questioned the \$224,298 in total costs for the 23 expenditures. The \$224,298 represented 23 percent of the \$992,545 in expenditures tested. Based on our statistical sample, we are 95

percent confident there were between \$321,509 and \$496,695 in potential questioned cost, because vendor selection did not comply with specific sections of the FAR.⁴

MTC Response:

The center receives a yearly allocation from the Chicago Public Schools as a supplement to the center's budget for 30 – 40 students seeking their high school diploma, while enrolled in the Job Corps program. The high school program includes an option to get a diploma through YCCS or a national online program. These programs are run conjointly. Costs to run these programs are relevant and allowable to both Job Corps and YCCS. These costs include labor costs for instructors, training materials, facilities, recreation and staff development.

Based on the structure of the center accounting system, billing and reporting procedures, there is a clear distinction between DOL and YCCS expenses. Center expenses are classified on each of the individual invoices. Invoices can be charged to different types of available funds. Although this distinction exists, both types of funds are in many cases used for the same purpose. In no instance are costs which are classified as YCCS, billed to the Department of Labor and reported on the 2110.

OIG Statement: FAR Non-Compliance Caused By Weak Control Environment

MTC's Response

MTC takes exception to the assertion that "FAR Non-Compliance Caused by Weak Control Environment." The OIG asserts these conditions occurred because MTC Paul Simon Chicago had not established a control environment, including procedures and oversight, to ensure compliance with "FAR 52.244-5 for selecting sub-contracts on a competitive basis." According to FAR Subpart 52.244-5, the contractor shall select subcontractors (including suppliers) on a "competitive basis to the maximum practical extent consistent with the objectives and requirements of the contract." A contractor such as MTC is required to select subcontractors on a competitive basis to the maximum *practical extent consistent with the objectives and requirements* of its contract. This section does not mandate full and open competition in all or even most instances, nor does it impose all or any of the requirements of Part 6 on contractors in terms of the available bases and/or justification for limited or non-competitive awards. The OIG's assertion infers mandatory compliance instead of to *maximum practical extent*, as provided in the FAR.

The examples cited by the OIG as deficiencies in the 2005 CPSR report were corrected and approval of such CPSR was obtained from the contracting officer. The policies and procedures MTC has put in place do not mandate compliance with the entire FAR, like a government agency. MTC's policies and procedures that were approved through the CPSR process by the contracting office. MTC's approved subcontracting policies and procedures were never intended to meet agency FAR requirements, but were established to comply with contractor requirements and insure a strong control environment.

There are controls in place to ensure the government receives best value and procurements are based on the policies and procedures in place. Sole source documentation has been an area where MTC continues to modify and improve its policies and procedures. At the end of 2010, the policy was changed to have all sole source justifications over \$5,000 be reviewed by the Corporate Director of Procurement and approved by the Corporate Senior Vice President. Based on additional procurement desk audit findings, the Director of Corporate Procurement provided sole source training at the August, 2011 Finance Conference for the center Finance and Administration Directors and Buyers. Additionally, MTC is revising current Purchasing Policy 13.10 to state that "Sole source purchases between \$3,000 and \$5,000 must be submitted for corporate review". The center has not always documented this to the standard of the FAR, however, a contractor is not required to adhere to the FAR

⁴The mid-point estimate was \$427,160.

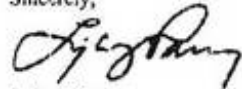
as a whole. We have generally complied with our policies and procedures. MTC performs reviews of the controls in place, assessments and continually train their staff for improvements and compliance in the procurement area. Having said this, MTC Paul Simon Chicago does have a very strong control environment.

CONCLUSION

The OIG is strong, albeit misguided, in its believe that DOL Job Corps contractors should be required to award subcontracts in accordance with the same detailed FAR requirements that the Government itself must observe when awarding prime contracts. This may be the OIG's understanding and belief, but it is not the law.

The OIG auditors have been respectful in their discussions with MTC, yet unyielding in their mission to apply the FAR to Job Corps contractors as though they were government agencies. It has also been disappointing to see the OIG deny MTC a right to an exit conference and ignore entirely the *extensive* factual input provided by MTC regarding the various items identified in the audit. In the end, MTC is baffled by OIG's insistence on its "findings" regardless of whether such "findings" have any factual or legal support. It is discouraging, at best, to see an important government audit function performed in such a misguided and wasteful manner. The OIG's Report is erroneous and prejudicial. MTC requests that such Report be withdrawn.

Sincerely,



Lyle J. Parry
Sr. Vice President, CFO

cc: Scott Marquardt, MTC
Anita Sharp, MTC
Bryan Mason, Paul Simon Chicago JCC
Dr. James Turkvant, OIG DOL
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Appendix F

Acknowledgements

Key contributors to this report were Ray Armada (Audit Director), Michael Elliott (Audit Manager), Dr. James Turkvant (Lead Auditor), Miguel Hughes and Lorenzo Thornton (Auditors), and Steve Witherspoon (Reviewer).

TO REPORT FRAUD, WASTE OR ABUSE, PLEASE CONTACT:

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