

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:

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.

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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
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MTC Response to Draft Report



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October 19, 2011

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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 contractor 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.

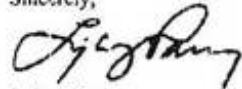
as a whole. We have generally complied with our policies and procedures. MTC performs reviews of the controls in place, assessments and continually train their staff for improvements and compliance in the procurement area. Having said this, MTC Paul Simon Chicago does have a very strong control environment.

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
Lindsay Simmons, Jackson Kelly PLLC