

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
CLEARFIELD JOB CORPS CENTER**

Date Issued:
Report Number:

March 30, 2012
26-12-003-03-370

BRIEFLY...

Highlights of Report Number 26-12-003-03-370, issued to the Assistant Secretary for Employment and Training.

WHY READ THE REPORT

Management & Training Corporation (MTC) operates the Clearfield Job Corps Center (MTC Clearfield), located in Clearfield, Utah. This report discusses how MTC Clearfield 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 approximately \$3 million due to MTC Clearfield's non-compliance with its own procurement Standard Operating Procedures (SOP). This report also discusses process improvements MTC Clearfield, ETA, and Job Corps need to make to ensure MTC Clearfield's future sub-contract and purchase order awards comply with its own procurement guidance.

MTC Clearfield's contract covers the five-year period from April 1, 2010, to March 31, 2015. The contract value totals approximately \$146 million, (\$57 million for the base 2-year period and \$89 million for 3 option years).

WHY OIG CONDUCTED THE AUDIT

Our audit objective was to answer the following question:

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

Our audit work was conducted at the MTC Clearfield Job Corps Center in Clearfield, UT; MTC Headquarters in Centerville, UT; ETA Headquarters' Office of Contract Management and the Job Corps National Office in Washington, DC; the Dallas Regional Office of Job Corps in Dallas, TX; and the Philadelphia Regional Office of Job Corps in Philadelphia, PA.

READ THE FULL REPORT

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

<http://www.oig.dol.gov/public/reports/oa/2012/26-12-003-03-370.pdf>.

March 2012

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

WHAT OIG FOUND

MTC Clearfield improperly awarded 10 of the 12 sub-contracts it managed during our review period. We questioned \$2,813,773 because MTC Clearfield did not comply with its own SOPs. We also questioned \$77,866 in costs for 16 expenditures more than \$3,000 because MTC Clearfield did not adequately justify and document sole-source procurements for the expenditures. Based on our statistical sample of 41 expenditures, we estimated that there were between \$155,860 and \$309,166 in potential questioned costs. In addition, for 10 expenditures totaling \$144,428 that were not included in our statistical sample, MTC Clearfield could not justify why the expenditures were paid without a related contracting instrument. In total, we questioned about \$3 million (\$2,813,773 plus \$77,866 plus \$144,428) in specific claimed costs related to MTC Clearfield's non-compliance with its own SOPs. However, based on our statistical sampling, the total costs for improperly awarded sub-contracts, purchase orders, and expenditures may be as high as \$3.3 million (\$2,813,773 plus \$309,166 plus \$144,428).

These conditions occurred because MTC had not established a control environment, including training and oversight, to ensure consistent compliance with its SOPs. Also, neither ETA contracting personnel nor Job Corps regional staff adequately monitored MTC Clearfield's sub-contracting procurement activities.

WHAT OIG RECOMMENDED

We recommended the Assistant Secretary for Employment and Training recover the costs we questioned, as appropriate; direct MTC to strengthen procedures, training, and oversight to ensure compliance; and direct ETA contract personnel and Job Corps regional staff to review all future MTC Clearfield sub-contracts for procurement compliance and approval prior to award.

ETA generally agreed with our findings, fully or partially accepted all of our recommendations, and will require MTC Clearfield 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 for fair and open competition.

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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
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200 Constitution Avenue, NW
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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) 2011 totaled about \$1.7 billion.

Management & Training Corporation (MTC) operates the Clearfield Job Corps Center (MTC Clearfield), located in Clearfield, Utah. MTC Clearfield's contract covers the 5-year period from April 1, 2010, to March 31, 2015. The contract value totals approximately \$146 million, (\$57 million for the base 2-year period and \$89 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;
- (c) Pricing policies and techniques, including methods of obtaining certified cost or pricing data;
- (d) Methods of evaluating sub-contractor responsibility;

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.

- (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 Clearfield was required to submit only its health and medical sub–contracts to ETA for consent prior to contract award.³ Additionally, MTC Clearfield’s SOPs were approved by ETA when MTC was awarded the contract to operate MTC Clearfield. If MTC Clearfield sub-contracting execution is not consistent with its SOPs, then ETA is authorized by the FAR to withdraw MTC CPSR approval.⁴

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 Clearfield’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 Clearfield ensure best value when awarding sub–contracts and claiming costs?

To address our audit objective, we reviewed criteria that were applicable to MTC Clearfield’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 SOPs. We analyzed MTC’s and Job Corps Dallas Regional Office’s assessments of MTC Clearfield’s operations, performed process walkthroughs with key MTC corporate and MTC Clearfield officials, and discussed our audit with ETA and Job Corps staff. We reviewed MTC Clearfield’s SOPs to determine whether they ensured open competition and

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

³Center operators without an approved CPSR are required to submit all sub-contracts to ETA for consent.

⁴FAR Subpart 44.305-3.

best value to the government and tested each of the sub–contracts and expenditures⁵ for compliance with the SOPs. Our testing included a review of the 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 Clearfield from April 1, 2010, to March 31, 2011. We examined all 12 sub–contracts (and their related invoice payments) more than \$25,000, totaling \$2,884,104, managed by MTC Clearfield during this period. We also reviewed a statistical sample of 41 expenditures more than \$3,000, totaling approximately \$322,000, from 121 expenditures totaling approximately \$942,000. These expenditures were generally initiated by purchase orders and were separate items from the 12 sub–contracts we reviewed. Additionally, we reviewed 10 expenditures totaling approximately \$144,000 that were judgmentally selected, and 2 strategic agreements (contracts) awarded by MTC headquarters' procurement staff.

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 Clearfield did not always ensure best value was received by the government when awarding sub–contracts and purchase orders. We questioned costs totaling more than \$3 million⁶ because MTC Clearfield did not always comply with its SOPs and ensure best value to the government. Based on our statistical sampling, we estimated that improperly awarded sub–contracts and purchase orders may be as high as \$3.3 million.⁷

MTC Clearfield improperly awarded 10 of 12 sub–contracts managed during our review period. For the 10 sub–contracts, we questioned \$2,813,773 because the center had not complied with its own procurement procedures and ensured best value. For 6 of these sub–contracts, MTC Clearfield did not adequately justify the sole-source procurements to establish a sound basis for award as required. For the other 4 sub–contracts, MTC Clearfield did not conduct adequate solicitations, cost or price analysis, or perform responsibility checks (such as evaluating quality, delivery, and technical aspects) as

⁵We also reviewed expenditures associated with purchase orders and other documents procuring goods and services, the use of which is addressed in MTC Clearfield's SOPs.

⁶Approximately \$2,813,773 in sub-contracts, \$77,866 in purchase orders, and \$144,428 for 10 invoices paid without a purchase order contract.

⁷A 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.

required.⁸ Since these sub-contracts were for physician services, including medical, mental health, dental, and optometry, it was critical that MTC Clearfield ensure its students received adequate care by performing responsibility checks. Responsibility checks should 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. In addition, MTC Clearfield did not follow its own SOPs, which required documentation to support \$165,141 of invoice payments made for three of the sub-contracts. These costs are already included in the \$2,813,773 we questioned because the awarding of the sub-contracts did not ensure best value.

Awarding purchase orders to vendors was an issue for 16 (39 percent) of the 41 expenditures more than \$3,000 we statistically selected. For all 16 expenditures, MTC Clearfield did not adequately justify and document sole-source procurements and MTC Clearfield management approved the expenditures without verifying the adequacy of the sole source justifications. We questioned \$77,866 in total costs for the 16 expenditures. Based on our statistical sample of the 41 expenditures, we are 95 percent confident there were between \$155,860 and \$309,166 in potential questioned costs.⁹ In addition, for 10 expenditures not included in our statistical sample and totaling \$144,428, MTC Clearfield could not justify why the expenditures were paid without a related sub-contract or purchase order. Together with the 10 improperly awarded sub-contracts, the 16 improperly awarded purchase orders, and the 10 expenditures paid without a contracting instrument, the total costs for improperly awarded subcontracts, purchase orders, and expenditures may be as high as \$3.3 million (\$2,813,773 plus \$309,166 plus \$144,428).

These conditions occurred because MTC Clearfield did not 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 Clearfield 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 Clearfield'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 did not substantially change our conclusions. In addition, neither ETA contracting personnel nor Job Corps regional staff adequately monitored MTC Clearfield's procurement activities to determine if MTC Clearfield 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.)

⁸MTC selection criteria for suppliers include quality, delivery, and technical aspects (SOP 560.1, B.7). We refer to this evaluation as "responsibility checks" throughout this report.

⁹The midpoint estimate was \$232,513.

We recommended the Assistant Secretary for Employment and Training recover the \$3 million we questioned, as appropriate; direct MTC and MTC Clearfield 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 Clearfield sub-contracts for competition and best value prior to award approval.

RESULTS AND FINDINGS

Objective — Did MTC Clearfield ensure best value when awarding sub-contracts and claiming costs?

MTC Clearfield improperly awarded sub-contracts resulting in about \$2.8 million in questioned costs.

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

MTC Clearfield improperly awarded 10 of 12 sub-contracts totaling \$2,813,773 because MTC Clearfield did not comply with its own procurement procedures and ensure best value. MTC Clearfield also improperly awarded purchase orders to vendors for 16 of the 41 expenditures, more than \$3,000. We questioned \$77,866 in costs for the 16 expenditures because MTC Clearfield did not adequately justify and document sole-source procurements for all 16 expenditures. Based on our statistical sample of the 41 expenditures, we estimated that there were between \$155,860 and \$309,166 in potential questioned costs. In addition, for 10 expenditures totaling \$144,428 that were not included in our statistical sample, MTC Clearfield could not justify why the expenditures were paid without a related contracting instrument. In total, we questioned about \$3 million (\$2,813,773 plus \$77,866 plus \$144,428) in specific claimed costs. However, based on our statistical sampling, the total costs for improperly awarded sub-contracts, purchase orders, and expenditures may be as high as \$3.3 million (\$2,813,773 plus \$309,166 plus \$144,428).¹⁰

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

¹⁰A 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.

MTC Clearfield's SOP Requirements

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

MTC Clearfield SOP # 560.01, *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. Procurement files shall be properly documented and organized to permit subsequent audit as to conformance with policy and procedures, individual responsibility, and justification for decisions and approvals.

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 applicable.
- B.7. a. and 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 Clearfield's SOP # 560.02, *Purchasing Policy*

- B.7. Bidding Levels and File Documentation – For purchases made under the Major Purchase Policy, minimum bidding levels and file documentation shall be followed.
 - Competition is required for purchases greater than \$3,000.
 - 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.
 - Purchase order/contract files shall be documented to show compliance with purchasing policies and procedures.

MTC Clearfield's SOP # 560.04.3, *Major Purchase Procedure*

- 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.

Non-Compliance Resulted in More Than \$3 Million in Questioned Costs

We reviewed all 12 sub–contracts, totaling \$2,884,104 million, managed by MTC Clearfield from April 1, 2010, to March 31, 2011. We also reviewed a statistical sample of 41 expenditures¹¹ more than \$3,000, totaling \$322,000, from 121 expenditures totaling \$942,000. In addition, we reviewed 10 expenditures totaling \$144,428 that were not included in our universe from which we selected the statistical sample and found that MTC Clearfield could not justify why the expenditures were paid without a related contracting instrument.

¹¹We also reviewed expenditures associated with purchase orders and other documents procuring goods and services, the use of which is addressed in MTC Clearfield's SOPs.

MTC Clearfield did not consistently comply with its own SOPs resulting in questioned costs totaling more than \$3 million. Table 1 summarizes the types of non-compliance, the number of instances, and the questioned costs for each type.

SOP Non-compliance	Sub-contracts over \$25,000 / amount of questioned costs	Expenditures over \$3,000 / amount of questioned costs
Inadequate sole-source justification, SOP # 560.02, 560.04.3 (Par. B.4.)	6 of 12 (50%) \$2,384,165	Sample: 16 of 41 (39%) \$77,866
Adequate solicitations, cost or price analysis, or responsibility checks were not executed prior to sub-contract award. SOP # 560.01 (Paragraph B.7)* and SOP # 560.04.03	4 of 12 (33%) \$429,608	Not applicable
Invoice payments made without an approved contracting instrument because SOPs were not followed. SOP # 560.04 (Paragraph A), SOP # 560.04.3 (Par. B.1., B.2., B.4., B.7., B.12) SOP # 507.5 (Par. B. Purchase Requisition/Purchase Order)	Not Applicable	10 expenditures (100%) \$144,428
Totals \$3,036,067	10 of 12 (83%) \$2,813,773	16 of 41 (39%) \$77,866 and 10 of 10 (100%) \$144,428

*SOP # 560.01, 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 more than \$2.8 million in costs for 10 sub-contracts managed by MTC Clearfield. The following are examples of how MTC Clearfield did not ensure (1) compliance with its SOPs; or (2) best value to the government:

Sub-contracts managed by MTC Clearfield – In 2010, Matthew Gardiner, M.D., was awarded a sub-contract with a base 2-year amount of \$68,800 to provide psychiatric services for Job Corps students. The contract also had three option

years with an aggregate value for all five years of \$202,240. In awarding the initial sub-contract, MTC Clearfield requested bids on the FedBizOpps website and received one bid, from Matthew Gardiner. In addition, the ETA Contracting Officer approved this sub-contract.

However, MTC Clearfield did not comply with its own SOPs, 560.02 and 560.04.3,¹² when it awarded the sub-contract to Matthew Gardiner because it did not perform a cost or price analysis or solicit additional bids. Both of these required actions should have been conducted because there was an absence of price competition since the center received only one bid. As such, MTC Clearfield could not ensure the sub-contract award resulted in best value to the government. We questioned the costs for the base 2-year period only and not the option years, or \$68,800.

- Sole source sub-contracts awarded by MTC Clearfield – In 2010, Adventures in Advertising was awarded a base two-year, \$607,040 sub-contract to provide student clothing and career prep uniforms to Job Corps students. The contract had three option years with an aggregate value for all 5 years totaling \$1,517,600. In awarding the initial sub-contract, MTC Clearfield issued a sole-source award and did not competitively bid or advertise the sub-contract. In addition, the ETA Contracting Officer approved this sub-contract.

When awarding the sub-contract to Adventures in Advertising, MTC Clearfield did not comply with its own SOPs¹³, because the center did not allow for competition or adequately justify its sole source award. The sole-source justification records maintained by MTC Clearfield stated, “Only one responsible source for the needed supplies/services.” However, the justification did not include substantive evidence that no other responsible party existed and that fair pricing resulted from performing cost or price analysis as required. Therefore, MTC Clearfield could not provide assurance that the sub-contract represented the best value for the government. We questioned the cost for the base 2-year period of the contract, or \$607,040.

See Exhibit 1 for a list of the 10 MTC Clearfield sub-contracts and exceptions where we questioned costs.

Some Invoice Payments Lacked Adequate Supporting Documentation

MTC Clearfield’s SOP 507.5, Paragraph 26 requires that the Accounting Manager monitor all financial transactions and ensure that expenditures are properly documented and approved. However, MTC Clearfield did not obtain supporting documentation as required

¹²SOP 560.02, Paragraph B.7.a. b. states that Competition is required for purchases greater than \$3,000 and provides for a minimum number of bids. SOP 560.04.3 Paragraph B.2.k. states, “For purchases greater than the Simplified Threshold (\$100,000), the requirements for Cost or Pricing Data are applied.”

¹³SOP 560.02, Paragraph B.7.a. states that Competition is required for purchases greater than \$3,000. SOP 560.04.3 Paragraph B.2.a. states, “The purchase is properly advertised and/or solicited.” Paragraph B.2.k. states, “For purchases greater than the Simplified Threshold (\$100,000), the requirements for Cost or Pricing Data are applied.”

by its own SOPs prior to payment for 3 of the 12 sub-contracts we reviewed. For two sub-contracts, physicians billed hours amounting to \$140,979 and \$21,318 that were not supported because documentation required by the contract was not obtained and reviewed prior to payment. For the third sub-contract, a comparison of the receiving reports and related invoices indicated that \$2,844 was paid for pharmaceutical supplies that were not received. In total, \$165,141 in payments lacked adequate supporting documentation. However, these costs were already included in the \$2.8 million we questioned because MTC Clearfield did not comply with its SOPs when awarding the sub-contracts.

Expenditures More Than \$3,000 with Questioned Costs

As previously noted, MTC Clearfield did not comply with its own SOPs when awarding purchase orders for 16 of the 41 expenditures more than \$3,000 that we statistically selected. For all 16 expenditures,¹⁴ totaling \$77,866, MTC Clearfield did not adequately justify and document sole-source procurements and MTC Clearfield management approved the expenditures without verifying the adequacy of the sole source justifications. The following are examples of the center's inadequate sole-source justifications:

- MTC Clearfield sole sourced a purchase of software maintenance from the vendor, Network Consulting Service. MTC Clearfield justified the sole-source purchase with documentation that indicated the vendor was the only responsible source for the needed supplies. However, the justification did not include sufficient evidence that no other responsible party existed or that the center performed cost or price analysis to ensure fair pricing. As such, we questioned the \$15,851 paid for the software maintenance.
- On two occasions, MTC Clearfield sole sourced purchases of graduation supplies from the vendor Jostens, Inc. MTC Clearfield did not document its justifications for the two sole-source purchases. As such, we questioned the \$14,183 paid for the two purchases of graduation supplies.

The remaining 13 sole-source procurements were similar. MTC Clearfield did not document or support its justifications, or did not perform cost or price analysis to ensure fair pricing. We questioned the \$77,866 in total costs for the 16 expenditures. Based on our statistical sample, we are 95 percent confident there were between \$155,860 and \$309,166 in potential questioned costs.¹⁵

In addition, during our audit period of April 1, 2010, to March 31, 2011, we reviewed 10 expenditures representing payments made to Salt Lake Community College for educational services. The expenditures totaling \$144,428 were not included in our statistical sample.

¹⁴SOP 560.02, Paragraph B.7.a. states that Competition is required for purchases greater than \$3,000. SOP 560.04.3 Paragraph B.2. requires the solicitation of pricing, proper advertising, competitive bidding, or a sole source justification when competitive bidding is not possible. Paragraph B.4.c. 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."

¹⁵The midpoint estimate was \$232,513.

MTC Clearfield did not justify why the procurement of the educational services was not open to competition and why the expenditures were paid without a sub-contract or purchase orders as required.¹⁶ In accordance with MTC Clearfield's SOPs, MTC should have competed the procurements fairly and openly and awarded a purchasing instrument appropriate to the circumstances or properly justified sole-source procurement. On April 1, 2011, MTC Clearfield awarded a sub-contract to Salt Lake Community College to provide the educational services, but unlike the previous period, MTC used a contracting instrument as required.

Together with the 10 improperly awarded sub-contracts, the 16 improperly awarded purchase orders, and the 10 expenditures paid without a contracting instrument, the total costs for improperly awarded subcontracts, purchase orders, and expenditures may be as high as \$3.3 million (\$2,813,773 plus \$309,166 plus \$144,428).

Non-Compliance Caused by Weak Control Environment

These conditions occurred because MTC Clearfield did not always follow its own SOPs as cited in this report; and training and oversight were not adequate. The center also did not have sufficiently detailed procedures in place. MTC Clearfield 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 research, direct solicitations) and improved documentation of those efforts. As such MTC Clearfield 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 Clearfield'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 significantly changed our conclusions.

Our conclusions are also consistent with past reviews conducted by DOL and MTC. MTC had not established effective controls even though the results of a DOL CPSR in 2005 identified procurement deficiencies and a lack of management controls. For example, the 2005 CPSR report stated that files for sole-source purchases did not contain adequate detail to justify the sole-source awards. Additionally, the report stated that file documentation for cost or price analysis did not conclude whether prices were considered fair and reasonable. Although MTC provided a corrective action plan for these findings, MTC Clearfield still had problems in 2011 justifying sole-source procurement and conducting cost or price analysis.

¹⁶SOP # 560.02, Paragraph B.7.a. – states that Competition is required for purchases greater than \$3,000, SOP # 560.04 – Paragraph A – Major purchases must be processed by means of a purchase requisition (PR) and subsequent purchase order (PO)..., SOP # 560.04.3 – (See Par. B.1., B.2., B.4., B.7., B.12); and SOP # 507.5 – (See Par. B. Purchase Requisition/Purchase Order).

MTC also conducted a Corporate Assessment of MTC Clearfield in October 2010. This internal assessment determined that procurement files were missing required documents, including sole-source justifications. MTC Corporate recommended to MTC Clearfield that it “should ensure all files are documented as required in accordance with all corporate finance policies.” In response to the assessment, the MTC Clearfield procurement staff was provided training. Despite the training, we identified sole-source problems in 2011 and concluded that the training and oversight was not adequate.

Furthermore, neither ETA contracting personnel nor Job Corps regional staff adequately monitored MTC Clearfield’s procurement activities to determine whether MTC Clearfield’s use of competition and best value were achieved in its sub-contracting. MTC had an approved purchasing system, had obtained consent from the ETA Contracting Officer for its health and medical and multi-year sub-contracts, and had approved SOPs, which were, by approval, deemed adequate by ETA. Despite these approvals, MTC Clearfield did not consistently comply with its own SOPs and ensure best value to the government.

Job Corps’ Dallas Regional Office also conducted a Regional Office Center Assessment (ROCA) at MTC Clearfield in May 2011. However, the ROCA did not include any work on procurement matters at MTC Clearfield. ETA contracting officials told us the ROCA does not normally include procurement matters as the Job Corps program no longer has contracting authority, and the ROCA is designed as a Job Corp program review of the center and not as a procurement review of the center. However, Job Corps and ETA have the option of reviewing procurement during a ROCA or independently when known problems exist. Neither Job Corps nor ETA identified MTC Clearfield’s continuing procurement problems.

Recommendations

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

1. Strengthen MTC Clearfield 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 on 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 Clearfield procurement requirements.
4. Develop procedures for providing and documenting supervisory oversight of MTC Clearfield 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 Clearfield complies with its own procurement guidance when awarding sub–contracts and purchase orders and claiming related costs. This should include reviewing MTC Clearfield's procurement activities for adequate compliance during on-site center assessments.
6. Review all future MTC Clearfield sub–contracts for adequate procurement compliance prior to approval.

We appreciate the cooperation and courtesies that ETA personnel and MTC Clearfield 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 Clearfield Sub-contracts and SOP Non-compliance

Vendor Name	Amount of Contract*	Goods or Service Provided	SOP Non-compliance
Adventures in Advertising	\$607,040	Clothing	<ul style="list-style-type: none"> • Inadequate Sole Source Justification • No evidence other vendors not available • Cost or Price Analysis was not conducted or documented
Clark Finlinson, DDS	45,408	Dental	<ul style="list-style-type: none"> • Responsibility checks (e.g.; quality, delivery, technical aspects) not performed on all bidders; award was based solely on price
Davis Applied Technology College – Off Center Training	701,794	Specialized Training	<ul style="list-style-type: none"> • Inadequate Sole Source Justification • No evidence other vendors not available • Cost or Price Analysis was not conducted or documented
Davis Applied Technology – Advanced Career Training	188,081	Specialized Training	<ul style="list-style-type: none"> • Inadequate Sole Source Justification • No evidence other vendors not available • Cost or Price Analysis was not conducted or documented
Diane E.H. Wilson, MD-P	254,150	Physician	<ul style="list-style-type: none"> • Responsibility checks (e.g.; quality, delivery, technical aspects) not performed on all bidders; award was based solely on price
Hill AFB Pharmaceuticals	444,000	Pharmaceuticals	<ul style="list-style-type: none"> • Inadequate Sole Source Justification documented
Matthew J. Gardiner, MD	68,800	Psychiatric	<ul style="list-style-type: none"> • Only one bidder with no further solicitation • Cost or Price Analysis was not conducted or documented
Michael G. Thain, OD	61,250	Optometry	<ul style="list-style-type: none"> • Responsibility checks (e.g.; quality, delivery, technical aspects) not performed on all bidders; award was based solely on price
Weber State University	75,750	Specialized Training	<ul style="list-style-type: none"> • Inadequate Sole Source Justification • No evidence other vendors not available • Cost or Price Analysis was not conducted or documented
Davis Hospital and Medical Center	367,500	Emergency Medical	<ul style="list-style-type: none"> • Inadequate Sole Source Justification • No evidence other vendors not available • Cost or Price Analysis was not conducted or documented
Total	\$2,813,773		

*The “Amount of Contract” column reflects base year amounts only and not option-year amounts.

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Exhibit 2

FAR Criteria on Sub-contracting Used by ETA Contracting Officers

The following FAR subparts show the criteria ETA Contracting Officers use when reviewing sub-contracting by center operators.

FAR Part 44, *Subcontracting Policies and Procedures*

- FAR Subpart 44.202-2(a)(5) – The Contracting Officer shall obtain adequate price competition or properly justify its absence.
- FAR Subpart 44.202-2(a)(7) and FAR Subpart 9.104-1 – The Contracting Officer shall 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) – The Contracting Officer shall 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(a)(9) – The Contracting Officer shall select the sub-contract type that should be appropriate for the risks involved and be consistent with current policy.
- FAR Subpart 44.202-2(a)(11) – The Contracting Officer shall adequately and reasonably translate 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*

- 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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Background

Job Corps is authorized by Title I-C of WIA and is administered by ETA's Office of Job Corps under the leadership of the National Director, who is supported by a field network of six Regional Offices of Job Corps. The Job Corps program's budget for FY 2011 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.

Management & Training Corporation (MTC) operates the Clearfield Job Corps Center (MTC Clearfield), located in Clearfield, Utah. MTC Clearfield is located in Clearfield, Utah, and consists of several buildings. One of these buildings houses the center administration and training sites. Other buildings house the student dormitory, cafeteria, recreation, the career preparation program, academic training classes, outreach and admissions, and the career transition department.

MTC was awarded contract number J10F6UT014 to operate the MTC Clearfield center effective April 1, 2010. MTC Clearfield's contract covers the five-year period from April 1, 2010, to March 31, 2015 and totals approximately \$146 million. The contract is for operations of the MTC Clearfield center for the base two year period April 1, 2010, through March 31, 2012, at an estimated cost of \$57 million. In addition, MTC was awarded 3 option years, for the period April 1, 2012, through March 31, 2015, at a cost of approximately \$89 million. MTC Clearfield has an authorized On-Board-Strength of 1,120 students.

MTC had an approved CPSR. As such, MTC Clearfield was required to submit only its health and medical sub-contracts to ETA for consent prior to contract award.¹⁷ Additionally, MTC Clearfield's SOPs were approved by ETA when MTC was awarded the contract to operate MTC Clearfield. If MTC Clearfield sub-contracting execution is not consistent with its SOPs, then ETA is authorized by the FAR to withdraw MTC CPSR approval.¹⁸

¹⁷Center operators without an approved CPSR are required to submit all sub-contracts to ETA for consent.

¹⁸FAR Subpart 44.305-3.

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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 Clearfield'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 Clearfield ensure best value when awarding sub-contracts and claiming costs?

Scope

The audit covered sub-contracts managed and expenditures incurred by MTC Clearfield from April 1, 2010, to March 31, 2011. We reviewed 12 sub-contracts (and their related invoice payments) more than \$25,000, totaling approximately \$2,884,104, managed by MTC Clearfield during this period. Furthermore, we reviewed invoices paid and associated with the 12 sub-contracts. In addition, we reviewed two Strategic Agreements awarded by MTC headquarters' procurement staff. We also reviewed a statistical sample of 41 expenditures more than \$3,000, totaling approximately \$322,000, from a universe of 121 expenditures totaling approximately \$942,000. Additionally, we reviewed 10 expenditures that were not statistically selected, totaling approximately \$144,000. Expenditures were generally initiated by purchase orders and were separate items from the 12 sub-contracts we reviewed. MTC's contract to operate the MTC Clearfield center was not included in our review because it was awarded by ETA.

Our audit work was conducted at the MTC Clearfield Job Corps Center in Clearfield, UT; MTC Headquarters in Centerville, UT; ETA Headquarters' Office of Contract Management and the Job Corps National Office in Washington, DC; the Dallas Regional Office of Job Corps in Dallas, TX; and the Philadelphia Regional Office of Job Corps in Philadelphia, PA.

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 audit work at MTC Clearfield in Clearfield, UT, and ETA's National Office in Washington, DC.

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 FAR and Job Corps' and MTC Clearfield's procurement regulations and policies. We conducted interviews with MTC Clearfield officials responsible for procurement and invoice payment.

To assess MTC Clearfield's internal controls over procurement, we interviewed key center staff; compared applicable Job Corps requirements, including the Job Corps PRH, with applicable sections of the FAR, contract provisions, and MTC Clearfield's SOPs; 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 of MTC Clearfield, MTC Corporate, and ETA/Job Corps over the monitoring and approval of sub-contracts as of March 2011.

Specifically, we obtained all supporting documents pertaining to announcing the solicitation, performing responsibility checks of vendors, awarding the contracting instrument, and paying invoices for the 12 sub-contracts and 41 expenditures. We tested files for completeness for the 12 sub-contracts by conducting a meeting with the MTC Clearfield Buyer and by reviewing the contract files in his office. We tested for 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 Clearfield. We requested copies of bank statements and requested a judgmental sample of canceled checks to confirm payees and amounts.

We tested approximately 33 percent of the invoices for the 12 sub-contracts. For 3 of the 12 sub-contracts, we expanded our invoice testing to all 12 months of invoice payments. We did not test invoices associated with the two Strategic Agreements awarded by MTC Corporate.

For the 12 sub-contracts awarded by MTC Clearfield, we obtained the contract file and all supporting documentation. We reviewed all 12 sub-contracts, totaling approximately \$2,884,104 million, managed by MTC Clearfield from April 1, 2010, to March 31, 2011.

We tested each of the sub-contracts and expenditures for compliance with the MTC Clearfield's SOPs, including awarding sub-contracts based on advertising, competition, adequate justification, documentation, and cost or price analysis. We also reviewed a statistical sample of 41 expenditures more than \$3,000, totaling \$322,000, from 121 expenditures totaling \$942,000. These expenditures were generally initiated by purchase orders and were separate items from the 12 sub-contracts we reviewed. In addition, we reviewed 10 expenditures totaling approximately \$144,000 that were not

statistically selected. These expenditures represented payments to a community college for student educational services and the expenditures had no associated contracting instrument.

For purchase orders issued by MTC Clearfield, we obtained the check register for the audit period. From the check register, we excluded checks related to payroll, checks less than \$3,000, contract invoices for the 12 sub-contracts, and checks for utilities. This left 121 expenditures, totaling \$942,000. We used statistical sampling to select a sample of 41 expenditures, totaling \$322,000.

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 Clearfield'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 Clearfield 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 Clearfield'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 Clearfield's check register. We assessed the reliability of the data by (1) performing various testing of required data elements, and (2) interviewing MTC Clearfield financial officials knowledgeable about the data. Based on these tests and assessments, we concluded the data was sufficiently reliable to use in meeting the audit objective.

Criteria

We used the following criteria to perform this audit:

- Federal Acquisition Regulations,
- Job Corps Policy and Requirements Handbook,
- MTC Clearfield Standard Operating Procedures, and
- MTC Corporate 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.¹⁹ 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;
- (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 Procedures (SOP) require that its center processes be consistent with government regulations.²⁰

¹⁹ETA 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.

²⁰MTC SOP #13.01, General Purchasing Policy, dated January 1, 2011, Paragraph B.1.

Appendix C

Acronyms

DOL	U.S. Department of Labor
ETA	Employment and Training Administration
FAR	Federal Acquisition Regulation
MTC	Management & Training Corporation
MTC Clearfield	Clearfield Job Corps Center Operated by MTC
OIG	Office of Inspector General
PO	Purchase Orders
PRH	Policy and Requirements Handbook
SOP	Standard Operating Procedures
WIA	Workforce Investment Act

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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 12 2011

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

FROM: JANE OATES *Jane Oates*
Assistant Secretary

SUBJECT: OIG Draft Report No. 26-11-008-03-370,
"Management and Training Corporation Did Not Ensure Best Value in Awarding Sub-Contracts at the Clearfield Job Corps Center"

This memorandum responds to the subject draft audit report, dated September 23, 2011, Draft OIG Audit Report No. 26-11-008-03-370, *"Management and Training Corporation Did Not Ensure Best Value In Awarding Sub-Contracts at the Clearfield 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 sub-contracts 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 \$2,813,773. This includes ETA making a final determination as to the amount of excess funds paid by the contractor to be recovered while recognizing the value of goods and services received.

Response: Management accepts this recommendation in part.

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

Table 1: Instances of FAR non-compliance resulting in questioned costs		
FAR Non-compliance	Sub-contracts over \$25,000 / amount of questioned costs	Expenditures over \$3,000 / amount of questioned costs
(a) Sub-contract award not based on required responsibility checks FAR Subpart 44.202-2 (a) (7) and (11)	4 of 12 (33%) \$429,608	Not applicable
(b) Inadequate sole-source justification FAR Subpart 44.202-2(a) (5) and (8)	6 of 12 (50%) \$2,384,165	Sample: 16 of 41 (39%) \$77,866
(c) Invoice payments without a contracting instrument. FAR Subpart 44.202-2(a)(5) and FAR Subpart 44.202-2 (a) (9)	Not Applicable	10 expenditures (100%) \$144,428
Total.....\$3,036,067	10 of 12 (83%) \$2,813,773	16 of 41 (39%) \$77,866 and 10 of 10 (100%) \$144,428

- (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 or sole source awards and this must be documented in the file.
- (c) We disagree with the OIG. The audit summary report indicates the paid invoices lacked supporting documentation to validate the invoice and not that invoices were paid without a contracting vehicle. The OIG needs to clarify the description for item c in the table.

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 sub-contracts.

We consider this recommendation resolved.

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

Response: Management accepts this recommendation in part.

OCM will direct 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 Clearfield complies with the FAR when awarding sub-contracts and purchase orders and claiming related cost. This should include reviewing MTC Clearfield 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 Clearfield Job Corps Center.

We consider this recommendation resolved.

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

Response: Management accepts this recommendation in part.

MTC 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 Clearfield Job Corps Center to the Regional Contracting Officer. Further, OCM will modify the MTC CPSR

approval memo to reflect the exception for the Clearfield JCC subcontracts. The Regional CO's review of sub-contracts 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. OIG clarification will be reviewed to determine if resolutions need modification.

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



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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 Clearfield 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 Clearfield Jobs Corps Center ("Clearfield JCC"). You indicated that your audit objective was to determine "Did Clearfield 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 17, 2011 Statement of Fact (SOF) audit of Clearfield JCC, states that it examined whether the Clearfield 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 Clearfield 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 it 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 Clearfield award sub-contracts and claim costs in accordance with FAR?

OIG Finding — MTC Clearfield 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 16 of the 41 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 Clearfield'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 Clearfield contract.

It is true, as cited by the OIG, that MTC's contract to operate Clearfield 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 Clearfield 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.

(a) 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 Clearfield 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 contractors must follow in selecting its subcontractors. Nor was this FAR provision contractually flowed-down to MTC in its Clearfield 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 Clearfield 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 thirteen (13) open annual purchase orders – basically blanket purchase agreements – at Clearfield. The "consent" process does not apply to these types of arrangements, unless they are for Professional Health Services. Nine of the 13 (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 Clearfield's Non-Compliance Resulted in More Than \$3 Million in Questioned Costs

OIG Finding - Sub-contracts Above \$25,000 Where Specific FAR Non-compliance Resulted in Questioned Costs

The following are examples cited by the OIG for the two different types of specific FAR non-compliance followed by MTC's response.

Cited Example 1 – Mathew Gardiner, M.D.

OIG Statement – Mathew Gardiner, M.D. Subcontract

Sub-contracts managed by MTC Clearfield – In 2010, Mathew Gardiner, M.D. was awarded a sub-contract with a base 2-year amount of \$68,800 to provide psychiatric services for Job Corps students. The contract also had three option years with an aggregate value for all five years of \$202,240. In awarding the initial sub-contract, MTC Clearfield requested bids on the FedBizOpps website and received one bid, from Mathew Gardiner.

MTC Clearfield did not comply with FAR Subparts 44.202-2(a)(7) and (8), and FAR Subpart 9.104-1 when awarding the sub-contract to Mathew Gardiner. MTC Clearfield did not perform a cost or price analysis in the absence of adequate cost competition. Additionally, MTC Clearfield did not develop or document an adequate basis for awarding the sub-contract. The sub-contract was for psychiatric services for the center students. As such, it was critical for MTC Clearfield to ensure its students received adequate psychiatric care by performing responsibility checks on the vendors based on the quality of services to be provided as well as cost. Possible responsibility checks for a physician include: experience and performance providing services to a diverse student population, ages 16-24; evidence of technical expertise; and evidence of performance on similar type contracts.

Although MTC Clearfield did list responsibility checks as criteria in the solicitation, there was no evidence it performed responsibility checks to provide assurance that Mathew Gardiner could satisfactorily perform the contract as required by FAR Subparts 44.202-2(a)(7) and FAR Subpart 9.104-1. In addition, MTC Clearfield did not perform or document cost or price analysis as required by FAR Subpart 44.202-2(a)(8). Such analysis to ensure fair pricing was critical because the center only received one bid. As such, MTC Clearfield could not ensure the sub-contract award resulted in best value to the government and adequate psychiatrist care for its students. We questioned the costs for the base 2-year period only and not the option years, or \$68,800.

MTC Response – Mathew Gardiner, M.D. 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 Clearfield 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 license, certificate of insurance, DEA License, and résumé showing experience as incumbent with an established past performance history of 5 years with the center. 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.

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

The questioned cost of \$68,800 reflects the full 2-year period of the contract. However, actual costs for the audit period were \$40,400. Thus the questioned cost for this subcontract and other questioned costs on the additional subcontracts are substantially overstated.

Cited Example 2 – Adventures in Advertising

OIG Statement – Adventures in Advertising Subcontract

Sole-source sub-contracts awarded by MTC Clearfield – In 2010, Adventures in Advertising was awarded a base two-year, \$607,040 sub-contract to provide student clothing and career prep uniforms to Job Corps students. The contract had three option years with an aggregate value for all 5 years totaling \$1,517,600. In awarding the initial sub-contract, MTC Clearfield issued a sole-source award and did not competitively bid or advertise the sub-contract.

MTC Clearfield did not comply with the FAR when awarding the sub-contract to Adventures in Advertising because it did not provide adequate justification for sole-source procurement and it did not document a sound basis for the award as required by FAR Subpart 44.202-2(a)(7) and FAR Subpart 9.104-1. The sole-source justification records maintained by MTC Clearfield stated, "Only one responsible source for the needed supplies/services." However, the justification did not include substantive evidence that no other responsible party existed, that the center developed and used responsibility checks to ensure the vendor could satisfactorily complete the sub-contract, and that fair pricing was insured by performing cost or price analysis as required by FAR Subpart 44.202-2(a)(8). Therefore, MTC Clearfield had no assurance that the sub-contract represented the best value for the government. We questioned the cost for the base 2-year period of the contract, or \$607,040.

MTC Response – Adventures in Advertising 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 Clearfield 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 provider is the incumbent with an established past performance history with the center. This was based upon previous competitive solicitation in which they were determined to be the only service provider that could meet the center's unique requirements for quantity and selection that accepts clothing vouchers from individual students. MTC also did an EPLS check of this provider to verify that the provider was not on the government's debarred list. These responsibility checks and EPLS verification were provided to the contracting officer for consideration during the consent evaluation process with this subcontract.

As the center has over 1,000 students, having a student clothing store on site has been identified as a best practice. Adventures in Advertising along with center management have identified the type of appropriate clothing the students can purchase. This on-site store reduces transportation and staffing costs as supervised off-site trips are no longer required.

The questioned cost of \$607,040 reflects the full 2-year period of the contract. However, actual costs for the audit period were \$274,729. Thus the questioned costs for this subcontract and other questioned costs on the additional subcontracts are substantially overstated.

Exhibit 1 of the OIG report included a summary of specific FAR non-compliance for each of the 10 subcontracts where OIG questioned costs. Included below is the summary with MTC's applicable responses.

Sub-Contracts with FAR Non-Compliance

Vendor Name	Amount of Contract*	Good or Service Provided	FAR Non-Compliance Issues
Adventures in Advertising	\$607,040	Clothing	<ul style="list-style-type: none"> • Inadequate Sole Source Justification • No evidence other vendors not available • Responsibility checks not developed and used • Cost or Price Analysis was not conducted or documented
<i>MTC Response:</i> See Cited Example 2 for Adventures in Advertising response on page 7			
Clark Finlinson, DDS	45,408	Dental	<ul style="list-style-type: none"> • Basis for selection was not employed or documented

Vendor Name	Amount of Contract*	Good or Service Provided	FAR Non-Compliance Issues
<p><i>MTC Response:</i> Approved DOL consent form in file; bid abstract in file referencing three competitive bids; awarded to low bid which met selection criteria. This vendor is a small business. The responsibility checks MTC performed included a license, certificate of insurance, DEA License, and résumé showing experience as incumbent with an established successful past performance history of 9 years with the center. MTC also did an EPLS check of this provider to verify that the provider was not on the government's debarred list. These three competitive bids, small business classification, responsibility checks, and EPLS verification were provided to the contracting officer for consideration during the consent evaluation process with this subcontract.</p> <p>Vendor was identified as a provider in MTC's original Clearfield Job Corps Center operations proposal, which was reviewed and approved during the proposal process and incorporated into the prime contract.</p> <p>Actual contract costs for audit period were \$21,318.</p>			
Davis Applied Technology College – Off Center Training	701,794	Specialized Training	<ul style="list-style-type: none"> • Inadequate Sole Source Justification • No evidence other vendors not available • Responsibility checks not developed and used • Cost or Price Analysis was not conducted or documented
<p><i>MTC Response:</i> The center has a signed educational MOU agreement. Davis Applied Technology College (DATC), offers CNA, Manufacturing Technology, Small Engine Repair, and Composites training. DATC has partnered with the center to tailor programs to best meet the center's needs. As a public technical college, the prices are regulated by the state. DATC offers vocational training opportunities for selection by the students. This is an accredited college, and the students are able to obtain state resident tuition rates. This vendor has an established successful past performance history with the center. DATC is the closest college to the center. In fact, the DATC offers a nursing program adjacent to the center which allows the students to walk to class from the center, this saves both transportation and meal costs since the students can also return to the center for lunch.</p> <p>Vendor was identified as a provider in MTC's original Clearfield Job Corps Center operations proposal, which was reviewed and approved during the proposal process and incorporated into the prime contract.</p> <p>Actual contract costs for audit period were \$348,884. The center received \$19,400 in Pell grants to offset costs during the audit period.</p>			
Davis Applied Technology – Advanced Career Training	188,081	Specialized Training	<ul style="list-style-type: none"> • Inadequate Sole Source Justification • No evidence other vendors not available • Responsibility checks not developed and used • Cost or Price Analysis was not conducted or documented
<p><i>MTC Response:</i> See Davis Applied Technology College – Off Center Training response.</p>			
Diane E.H. Wilson, MD-P	254,150	Physician	<ul style="list-style-type: none"> • Basis for selection was not employed or documented
<p><i>MTC Response:</i> Approved DOL consent form in file; bid abstract in file referencing four competitive bids; awarded to best value based upon center management's interview of potential candidate (documented in file). This vendor is the incumbent and has 17 years of successful past performance history.</p> <p>Vendor was identified as a provider in MTC's original Clearfield Job Corps Center operations proposal, which was reviewed and approved during the proposal process and incorporated into the prime contract.</p> <p>Actual contract costs for audit period were \$130,951.</p>			

Vendor Name	Amount of Contract*	Good or Service Provided	FAR Non-Compliance Issues
Hill AFB Pharmaceuticals	444,000	Pharmaceuticals	<ul style="list-style-type: none"> Inadequate Sole Source Justification
<p><i>MTC Response:</i> Approved DOL consent form in file. Hill Air Force Base is a federal government entity. An agreement with Hill Air Force Base is in the file for government pricing for the pharmaceuticals. Because MTC was purchasing from a government entity and receiving government pricing, MTC is not required to do further procurement procedures. MTC relied on Hill AFB's procurement procedures for acquiring said pharmaceutical supplies. Award amount was based on center's prior usage from this military inventory supplier, with consideration for student population changes.</p> <p>Actual contract costs for audit period were \$195,438.</p>			
Mathew J. Gardiner, MD	68,800	Psychiatric	<ul style="list-style-type: none"> Price competition was not obtained Basis for selection was not employed or documented Cost or Price Analysis was not conducted or documented
<p><i>MTC Response:</i> See Cited Example 1 for Mathew J. Gardiner, MD response on page 6</p>			
Mathew G. Thain, OD	61,250	Optometry	<ul style="list-style-type: none"> Basis for selection was not employed or documented
<p><i>MTC Response:</i> Approved DOL consent form in file; bid abstract in file referencing three competitive bids; awarded to low bid which met selection criteria. This vendor is a small business. The responsibility checks MTC performed included a license, certificate of insurance, DEA License, and résumé showing experience as incumbent with an established successful past performance history of 6 years with the center. MTC also did an EPLS check of this provider to verify that the provider was not on the government's debarred list. These three competitive bids, small business classification, responsibility checks, and EPLS verification were provided to the contracting officer for consideration during the consent evaluation process with this subcontract.</p> <p>Vendor was identified as a provider in MTC's original Clearfield Job Corps Center operations proposal, which was reviewed and approved during the proposal process and incorporated into the prime contract.</p> <p>Actual contract costs for audit period were \$31,169.</p>			
Weber State University	75,750	Specialized Training	<ul style="list-style-type: none"> Inadequate Sole Source Justification No evidence other vendors not available Responsibility checks not developed and used Cost or Price Analysis was not conducted or documented
<p><i>MTC Response:</i> The center has a signed educational MOU agreement. As a public college, the prices are regulated and subsidized by the state of Utah. Weber State University offers advanced academic and vocational opportunities for selection by the students. This is an accredited university, and the students are able to obtain state resident tuition rates. This site provides programs that other local community colleges and universities do not. This vendor has an established successful past performance history with the center.</p> <p>Vendor was identified as a provider in MTC's original Clearfield Job Corps Center operations proposal, which was reviewed and approved during the proposal process and incorporated into the prime contract.</p> <p>Actual contract costs for audit period were \$59,022. The center received \$8,663 in Pell grants to offset costs during the audit period.</p>			

Vendor Name	Amount of Contract*	Good or Service Provided	FAR Non-Compliance Issues
Davis Hospital and Medical Center	367,500	Emergency Medical	<ul style="list-style-type: none"> • Inadequate Sole Source Justification • No evidence other vendors not available • Responsibility checks not developed and used • Cost or Price Analysis was not conducted or documented
<p><i>MTC Response:</i> The center has a signed MOU agreement which provides 75% of billed costs. This hospital is the closest facility for emergency medical services to the center. The file indicates that no other hospital within 25 miles would offer a discount from their billed charges. This vendor has an established successful past performance history with the center.</p> <p>Vendor was identified as a provider in MTC’s original Clearfield Job Corps Center operations proposal, which was reviewed and approved during the proposal process and incorporated into the prime contract.</p> <p>Actual contract costs for audit period were \$97,806.</p>			
Total	\$2,813,773		
* The “Amount of Contract” column reflects base year amounts only and not option-year amounts.			

FAR subpart 44.2 pertains to instances the contractor should obtain consent for certain subcontracts. In Clearfield JCC’s case, the center contract only requires consent by the contracting officer for Professional Health Services. In each circumstance where consent was required, the center did receive such consent. The contracting officer is to *consider* each of the FAR citations listed by the OIG in granting their consent. There is nothing that we are aware of that would indicate that consideration was not utilized in such award.

For the other contracts where consent is not required, we have indicated the support and justification for each award. It does not appear that any of these items were looked at by the OIG at the time of the center visit by the OIG or at the time the center responded to the statement of facts issued by the OIG with supporting backup. In fact, the only thing that changed in any of the reports issued by the OIG was the various FAR clauses they indicated were applicable in the audit. Each time the OIG continued to try to support requirements of the FAR which contractors are not subject to.

MTC strongly disagrees with these OIG findings as evidenced by the information discussed above. Additionally, overall each of the subcontracts above that have been questioned provides the best value for the government.

OIG Finding - Some Invoice Payments Lacked Adequate Supporting Documentation

As required by FAR Subpart 31.201-2, MTC Clearfield did not always obtain required supporting documentation prior to payment for 3 of the 12 sub-contracts we reviewed. For two physician sub-contracts, documentation required by the contract to support billed hours was not obtained and reviewed prior to payment. The two doctors billed hours that were not supported totaled \$140,979 and \$21,318, respectively. For the third sub-contract, a comparison of the receiving reports and related invoices indicated that \$2,844 was paid for pharmaceutical supplies that were not received. In total, \$165,141 in payments lacked adequate supporting documentation. These costs were already included in the \$2.8 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. Two of those subcontracts relate to medical services. The SOF stated “timesheets, as required by the contract, were not used to support billed medical hours (Finlinson and Wilson)”. 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 originally stated timesheets are required. We disagreed with this finding as there is no specific requirement for timesheets. After further discussion with the auditor it was indicated that timesheets are implied. This is an interpretation of the auditor and 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. The current finding now eliminates the word timesheets and does not indicate what support was missing but just generically refers to “documentation required by the contract”. All documentation required by the subcontract supporting the services was obtained. For internal control purposes the center maintains logs of students who receive medical services. The invoices are approved by the medical support staff that validate the time and services performed. There is definitely adequate documentation to support these payments. We disagree with this finding.

The third subcontract that was questioned was for Hill AFB Pharmaceuticals, in which the SOF stated “documentation did not support payments made”. After further discussion with the Clearfield JCC Accounting Manager, she indicated that there were times that the matching of invoices to receiving documents was not performed until after the payment of the invoice. This was corrected prior to the end of fieldwork of the OIG audit team.

OIG Finding - Expenditures over \$3,000 that Resulted in Questioned Costs

The OIG cites the following as examples of the center’s inadequate sole-source justifications:

Cited Example 1 – Network Consulting Service

OIG Statement – Network Consulting Service

MTC Clearfield sole sourced a purchase of software maintenance from the vendor Network Consulting Service. Justification for the sole-source purchase was documented as the vendor being the only responsible source for the needed supplies. However, the justification did not include sufficient evidence 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 44.202-2(a)(8). As such, we questioned the \$15,851 paid for the software maintenance.

MTC Response – Network Consulting Service

MTC disagrees with this finding. 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)(5), (7) and (8) before providing consent to subcontracts. Due to the type of this purchase and the fact that MTC has a Contractor's Purchasing System Review (CPSR) certification, the contracting officer is not required to provide consent. 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.

This purchase is for an existing software package. This represents an annual license and maintenance fee with the original software supplier. High performance has been maintained throughout the time period.

Cited Example 2 – Jostens, Inc.

OIG Statement – Jostens, Inc.

On two occasions, MTC Clearfield sole sourced purchases of graduation supplies from the vendor Jostens Inc. Justifications for the two sole-source purchases were not documented as required by FAR Subpart 44.202-2(a)(5). As such, we questioned the \$14,183 paid for the two purchases of graduation supplies.

MTC Response – Jostens, Inc.

MTC disagrees with this finding. Again the FAR clause being cited is requirements of the contracting officer and not the contractor. The contracting officer must review and consider FAR Subpart 44.202-2(a)(5) before providing consent to subcontracts. Due to the type of this purchase and the fact that MTC has a Contractor's Purchasing System Review (CPSR) certification, the contracting officer is not required to provide consent. 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.

The expenses identified by OIG consist of costs for the prior prime Clearfield JCC operations contract and outside (non-contract) funding from Davis County School District. The vendor has been used for graduation supplies due to quality of service and contract. Diplomas and covers have the center logo and custom design which would require extra die and setup fees to purchase elsewhere.

MTC Overall Response to Questioned Costs over \$3,000

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 individual purchases is well under the OIG's \$3,000 threshold.

New OIG Finding (not included in the original Statement of Facts)

In addition, during our audit scope period of April 1, 2010, to March 31, 2011, we reviewed 10 expenditures representing payments made to Salt Lake Community College that were not included in our statistical sample. MTC Clearfield paid a total of \$144,428 for those 10 expenditures, but could not justify why the expenditures were paid without a sub-contract or purchase orders. The 10 expenditures represented procurement of educational services and a contracting solicitation involving a sub-contract or purchase order that should have been advertised and awarded before the payments were made. 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, or properly justified sole-source

procurement. As of April 1, 2011, MTC Clearfield awarded a sub-contract to Salt Lake Community College to provide educational services, which provides validation of what MTC Clearfield should have done to precede the 10 expenditure payments made during our audit scope period.

MTC Response:

This finding was not included in the Statement of Facts or the previous discussion drafts issued by the OIG. Therefore no previous discussion was available until the final draft of this report.

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 Clearfield contract.

The contracting officer must review and consider FAR Subpart 44.202-2(a)(7) 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 center has a signed educational MOU agreement from 2003, which automatically renewed until cancelled, which covered the 10 expenditure payments made during the audit period. As a public college, the prices are regulated by the state. Salt Lake Community College offers advanced academic and vocational training opportunities for selection by the students. This is an accredited community college, and the students are able to obtain state resident tuition rates. This community college provides programs that other local community colleges do not. This vendor has an established successful past performance history with the center.

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

The center received \$103,934 in Pell grants to offset costs during the audit period.

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 Clearfield 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.

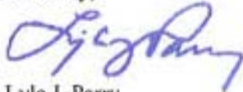
There are controls in place to ensure the government receives best value and procurements are based on the policies and procedures in place. Sole source documentation has been an area where MTC continues to modify and improve its policies and procedures. At the end of 2010, the policy was changed to 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 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 Clearfield does have a very strong control environment.

CONCLUSION

The OIG is strong, albeit misguided, in its belief 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 certain sections of 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
Dean Hoffman, MTC
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Appendix F

Acknowledgements

Key contributors to this report were Ray Armada (Audit Director), Alvin Edwards (Audit Manager), Renee Harrison-Womack (Lead Auditor), Travis Williams, Nicholas Cumby, and Ronald Larry (Auditors), and Steve Witherspoon (Reviewer).

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