U.S. Department of Labor

Office of Inspector General—Office of Audit

EMPLOYMENT AND TRAINING ADMINISTRATION

CONFLICT OF INTEREST COMPLAINT ON A JOB CORPS CENTER OPERATOR SUBCONTRACT AWARD HAD MERIT

Date Issued: September 28, 2012
Report Number: 26-12-004-03-370

U.S. Department of Labor
Office of Inspector General
Office of Audit

BRIEFLY…

Highlights of Report Number 26-12-004-03-370, issued to the Assistant Secretary for Employment and Training.

WHY READ THE REPORT

The Office of Inspector General (OIG) conducted a performance audit in response to an anonymous complaint referred to us by the Employment and Training Administration (ETA), Office of Contracts Management. The complaint concerned a subcontract to provide academic and career technical training services at the Homestead Job Corps Center (Homestead), in Homestead, FL. Homestead is 1 of 14 centers under 11 contracts with the Department of Labor (DOL) operated by the contractor ResCare, Inc. (ResCare).

The complaint alleged that an executive at ResCare awarded a subcontract to Human Learning Systems (HLS) in violation of government procurement requirements and that a subordinate ResCare executive owned and operated HLS. ResCare awarded the HLS subcontract, valued at an estimated $8.4 million, in November 2011 with services to begin in January 2012.

WHY OIG CONDUCTED THE AUDIT

We conducted the audit to determine the merit of the complaint allegation relating to the ResCare subcontract award to HLS for academic and career technical training services at Homestead. Specifically, we sought to answer the following question:

Did the complaint alleging a ResCare executive awarded a Homestead education and training subcontract to another ResCare executive without required competition have merit?

READ THE FULL REPORT

To view the report, including the scope, methodology, and full agency response, go to:

http://www.oig.dol.gov/public/reports/oa/2012/26-12-004-03-370.pdf.

September 2012

CONFLICT OF INTEREST COMPLAINT ON A JOB CORPS CENTER OPERATOR SUBCONTRACT AWARD HAD MERIT

WHAT OIG FOUND

The OIG found the complaint had merit. ResCare's subcontract award to HLS violated the Contractor Code of Business Ethics and Conduct, and competition requirements in the Federal Acquisition Regulation (FAR) as well as ResCare's own procurement policies and procedures. ResCare allowed an executive to award the subcontract to a company owned and operated by a subordinate, which raised significant conflict of interest concerns. ResCare did not advertise or open the subcontracting opportunity for competition to other subcontractors or justify the sole source procurement as required.

ResCare did not ensure Homestead obtained training services that provided the greatest overall benefit for Job Corps' at-risk youth at a fair price. ResCare's subcontract award to HLS violated the business ethics, competition, and sole source justification requirements of the FAR; thus, it was an improper award. In accordance with the FAR regarding improper activities, we questioned the fees paid to HLS as part of its cost plus fees subcontract. These fees are claimed by ResCare for reimbursement from the Federal Government and will total approximately $385,000 if HLS completes its subcontract.

WHAT OIG RECOMMENDED

The OIG recommended that: ETA recover the fees DOL has reimbursed ResCare for HLS' services at Homestead; take further remedial action as allowed by the FAR and the ResCare contract; review all future ResCare subcontracts for procurement compliance and ETA approval prior to award; ensure ResCare complies with its center operator contract provisions and its own procurement policies and procedures; and implement procedures for ensuring each subcontract issued by a Job Corps center operator is free of potential conflicts of interest. The Assistant Secretary for ETA accepted our four recommendations and stated it will: disallow all costs associated with the HLS subcontract; withdraw ResCare's purchasing system approval and require ResCare to seek DOL Contracting Officer approval for all subcontracts prior to execution; investigate and consider initiating steps to suspend or debar both ResCare and HLS including the principals involved; strongly encourage ResCare to terminate the subcontract with HLS; and require contractors to document no conflict of interest. ResCare stated that it will take corrective action, including re-procuring the agreement for academic and career technical training services.

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U.S. Department of Labor

Office of Inspector General
Washington, D.C. 20210

September 28, 2012

Assistant Inspector General's Report

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

The Office of Inspector General (OIG) conducted a performance audit in response to an anonymous complaint referred to us by the Employment and Training Administration's (ETA), Office of Contracts Management.[1] The complaint alleged that an executive at ResCare, Inc. (ResCare), the contracted operator for the Homestead Job Corps Center (Homestead), awarded a subcontract to Human Learning Systems (HLS) in violation of government procurement requirements and that a subordinate ResCare executive owned and operated HLS. The HLS subcontract, valued at an estimated $8.4 million, was to provide academic and career technical training at Homestead.[2] ResCare awarded the subcontract in November 2011 with services to begin in January 2012.

ResCare operated 14 Job Corps centers under 11 contracts with the Department of Labor (DOL). ResCare's purchasing system was reviewed and approved by DOL in 2010. As such, Homestead was required to submit only health and medical subcontracts to ETA for consent prior to contract award. DOL consent for all other subcontracts, including the HLS subcontract, was not required. In Program Year 2010 (ending June 30, 2011), the center graduated over 200 students from its academic programs and over 300 students from its career technical training programs.

To address the allegation, we conducted an audit with the following objective:

> Did the complaint alleging a ResCare executive awarded a Homestead education and training subcontract to another ResCare executive without required competition have merit?

[1] The Job Corps program is administered by ETA. Within ETA, the program is managed by the Office of Job Corps (Job Corps).
[2] The subcontract was for two base years plus three 1-year option years. The value for the two base years was $2.9 million and the value of the three option years will be based on a DOL provided inflationary rate.

We reviewed ResCare's 2004, 2009, and 2011 Homestead center operator contracts with the Department of Labor and the records for the HLS subcontract awarded in 2011. As part of our audit work, we gathered information relevant to the facts and circumstances surrounding the complaint allegations. As such, we reviewed information pertaining to ResCare's prior academic and career technical training subcontractor for Homestead, Reaching Tomorrows Workforce (RTW). RTW was awarded subcontracts in 2004 and 2009. We conducted audit work at ETA headquarters in Washington, DC and at Homestead in Homestead, FL. See Appendix B for a detailed description of our audit scope and methodology.

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 the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

RESULTS IN BRIEF

The complaint had merit. ResCare's subcontract award to HLS violated the Contractor Code of Business Ethics and Conduct, and competition requirements in the Federal Acquisition Regulation (FAR) as well as ResCare's own procurement policies and procedures. Practicing under a code of business ethics includes awarding subcontracts that are free of conflicts of interest. ResCare, however, allowed an Executive Vice President (VP) to award the subcontract to a company owned and operated by a subordinate VP, which raised significant conflict of interest concerns. ResCare did not advertise or open the subcontracting opportunity for competition to other subcontractors or justify the sole source procurement as required.

ResCare initially claimed that its agreement with HLS was not subject to the FAR and its own procurement policies because it was a partnership and not a contractor/subcontractor relationship. However, the HLS agreement specifically states that it was a contractor/subcontractor relationship and ResCare consistently referred to HLS as a subcontractor in its communications with DOL. ResCare acknowledged during the audit that its agreement with HLS was not a formal partnership.

The conflict of interest and lack of competition were caused by ResCare's disregard of the FAR and its own procurement policies and procedures. The ResCare executives with corporate responsibility for ensuring compliance executed the improper HLS subcontract. Homestead's education and training programs were critical to the center's success in meeting Job Corps' mission of providing quality training to at-risk youth. However, ResCare did not ensure Homestead obtained training services that provided the greatest overall benefit for these at-risk youth at a fair price. ResCare's subcontract award to HLS ResCare violated the business ethics, competition, and sole source justification requirements of the FAR; thus it was an improper award. In accordance with the FAR regarding improper activities (52.203-10), we question the fees paid to HLS as part of its cost plus fees subcontract.[3] These fees are claimed by ResCare for reimbursement from the Federal Government and will total approximately $385,000 if HLS completes its subcontract.

We recommend that ETA recover the fees the Department has reimbursed ResCare for HLS' services at Homestead; take further remedial action as allowed by the FAR and the ResCare contract; review all future ResCare subcontracts for procurement compliance and ETA approval prior to award, and ensure ResCare complies with its center operator contract provisions and its own procurement policies and procedures; and implement procedures for ensuring each subcontract issued by a Job Corps center operator is free of potential conflicts of interest.

ETA AND RESCARE'S RESPONSES

In its response to our draft report, ETA accepted our four recommendations and stated it will disallow all costs associated with the HLS subcontract, including the fees; investigate and consider initiating steps to suspend or debar both ResCare and HLS including the principals involved; and withdraw ResCare's purchasing system approval, which will require ResCare to seek DOL Contracting Officer approval for all subcontracts for each contract they operate prior to executing any subcontract; and require contractors to document no conflict of interest. ETA will also strongly encourage ResCare to terminate the subcontract with HLS; and either absorb the functions internally, while they re-compete the requirement, or award to a different contractor with which there is no conflict of interest. ETA's response is included in its entirety at Appendix D.

ResCare stated in its response that it did not intend to violate the Contractor Code of Business Ethics and Conduct, competition requirements of the FAR, or ResCare procurement policies and procedures; and instead, took steps to remove an underperforming subcontractor at the direction of DOL, and under exigent circumstances replaced the subcontractor with HLS. ResCare also stated that in light of the OIG's findings and to avoid any appearance of impropriety, it will take corrective action, including re-procuring the agreement for academic and career technical training services consistent with the Contractor Code of Business Ethics and Conduct, the FAR, and ResCare's policies and procedures. ResCare provided explanations of the steps it took to remove the underperforming subcontractor and its corrective actions in its response to our draft report. The response is included in its entirety at Appendix E.

[3] FAR Part 52, subpart 52.203-10 allows DOL to reduce the cost of a contract/subcontract by the amount of profit or fee if the head of the contracting activity determines there was illegal or improper activity.

RESULTS AND FINDINGS

Objective—Did the complaint alleging a ResCare executive awarded a Homestead education and training subcontract to another ResCare executive without required competition have merit?

ResCare violated business ethics, competition, and sole source justification requirements.

The complaint had merit. ResCare's subcontract award to HLS violated the Contractor Code of Business Ethics and Conduct, and competition requirements in the FAR as well as ResCare's own procurement policies and procedures. Practicing under a code of business ethics includes awarding subcontracts that are free of conflicts of interest. ResCare, however, allowed an Executive VP to award the subcontract to a company owned and operated by a subordinate VP, which raised significant conflict of interest concerns. Further, the subcontract was also awarded without competition or sole source justification. As such, ResCare failed to ensure Homestead obtained training services that provided the greatest overall benefit for Job Corps' at-risk youth at a fair price. This occurred because ResCare disregarded the FAR and its own procurement policies and procedures. ResCare's subcontract award to HLS violated the business ethics, competition, and sole source justification requirements of the FAR; thus, it was an improper award. In accordance with the FAR regarding improper activities, we question the fees paid to HLS as part of its cost plus fees subcontract.

<u>FAR and ResCare Policy Required Business Ethics and Competition</u>

FAR Requirements

ResCare was required by its 2011 Homestead center operator contract to comply with FAR section 52.203-13, Contractor Code of Business Ethics and Conduct. This FAR section required ResCare to have a written code of business ethics and ensure compliance with that code, including awarding subcontracts that are free of conflicts of interest. The FAR also required ResCare to disclose to the OIG and the DOL Contracting Officer (CO) if it had evidence of a violation of federal criminal law involving a conflict of interest. ResCare was also required to comply with FAR sections 52.244-2, Subcontracting and 52.244-5, Competition in Subcontracting. These sections prescribe the contractor's responsibilities when subcontracting to include the requirement to select subcontractors on a competitive basis to the maximum practical extent.

ResCare Policy Requirements

ResCare's Code of Business Ethics and Conduct specifically prohibited an officer or employee from participating in the selection, award, or administration of a procurement under the center contract where an individual has a financial interest in any organization considered for award. In addition, the ResCare Procurement/Property Operations

Manual and Homestead Standard Operating Procedures (SOP) both provided detailed guidance requiring competition or sole source justification:

Competition

- ResCare Procurement/Property Operations Manual (PRC 4010, Procurement) - Effective competition will constitute the basic principle of procurement and that effective procurement planning, source selection, and award are mandatory to provide material and services of quality and quantity at the lowest cost obtainable in adherence with ethical practices, contract stipulations, and government statutes and directives.

- Homestead Procurement Procedures (Subsection 1.A) - It is the intent of Homestead to procure all goods and services through competitive means when utilizing subcontractors with most procurement of goods and services for the center being done on-site. Purchases $25,000 and above require approval by the Center Director, Director of Admin Services, and Corporate Procurement Office.

Sole Source Justification

- ResCare Procurement/Property Operations Manual (PRC 4250, Sole Source) - The sole source requestor must provide a narrative that provides definitive information relating to the unique circumstances of the required goods or services (i.e., specific technical requirements), reasons for selection without competition, and a Justification and Approval Form.

- Homestead Procurement Procedures (Subsection 7) - Sole source procurement is the responsibility of the Buyer and requestors are asked to avoid calling for sole source on the requisition. When other than a low bidder is recommended, the Buyer must document the justification for selection by a written statement giving the reason. The recommendation must be approved by the Center Director.

<u>ResCare's Subcontract Award to HLS Violated Business Ethics and Competition Requirements</u>

ResCare's subcontract award to HLS violated the business ethics and competition requirements in FAR, and its own center operator contract provisions, Code of Business Ethics and Conduct, and procurement policies and procedures. Significant events related to the subcontract award are as follows:

- The Executive VP was the subordinate VP's immediate supervisor.

- The subordinate VP started HLS in 2011 and was the company's Chief Executive Officer (CEO). The Executive VP and his subordinate VP discussed the potential for HLS providing Homestead's academic and career technical training prior to the subcontract award. The Executive VP selected HLS without competition or sole source justification and forwarded his selection through his chain of command for approval.

- The Executive VP obtained approval for the HLS subcontract and signed the subcontract on November 29, 2011.

- The subordinate VP was a ResCare employee when he signed the subcontract (as HLS CEO) on November 28, 2011, and also when it became effective on January 1, 2012. His resignation from ResCare was effective on January 2, 2012.

- ResCare notified its DOL CO that it was terminating the services provided by the previous subcontractor, RTW, and entering into a subcontract with HLS on December 2, 2011, after the subcontract was awarded to HLS.[4] ResCare requested and received consent for the HLS subcontract, even though consent was not required because ResCare had an approved purchasing system. ResCare did not disclose the conflict of interest in its request.

ResCare acknowledged to OIG that it awarded the HLS subcontract to a company operated by a ResCare employee without competition or sole source justification. However, ResCare initially told OIG that its agreement with HLS was not subject to FAR and its own procurement policies because it was a partnership and not a contractor/subcontractor relationship. This claim was not valid because the HLS agreement specifically stated that it was a contractor/subcontractor relationship and ResCare consistently referred to HLS as a subcontractor in its communications with DOL. ResCare subsequently acknowledged to OIG that its agreement with HLS was not a legal partnership.

ResCare also told us it had to act quickly to replace RTW as its academic and career technical training subcontractor for Homestead due to RTW's declining performance. ResCare said RTW's poor performance jeopardized the academic and career technical training services provided to Homestead students and threatened ResCare's performance as the prime contractor for Homestead. In response to our report, ResCare asserted that it advised its DOL CO of the VP's employment relationship to ResCare and HLS prior to the HLS subcontract award and received the DOL CO's verbal authorization to proceed with the award. The DOL CO stated in a written declaration provided to OIG that she did not provide verbal authorization as claimed and she did not know the VP was still employed by ResCare at the time of her written HLS subcontract approval.

ResCare's actions violated its center operator contract provisions requiring compliance with FAR sections 52.244-2, 52.244-5 and 52.203-13. Specifically, ResCare did not award the subcontract on a competitive basis to the maximum extent practical as bids

[4] ResCare allowed RTW to operate for 5 months at Homestead without a subcontract and only terminated RTW's services when the HLS subcontract became effective.

were not solicited from other subcontractors. ResCare also did not comply with its Code of Business Ethics and Conduct as required by FAR. The code prohibited the subordinate VP from participating in the selection, award, and administration of the subcontract because he had a financial interest in HLS and was a ResCare employee when the subcontract was awarded and went into effect. ResCare also did not disclose to the OIG and DOL CO that it had evidence of a conflict of interest. ResCare senior management was aware and had documentation (e.g., the HLS subcontract) that the subcontract was awarded to a company owned and operated by a ResCare employee, and was thereby a conflict of interest.

ResCare also failed to comply with its corporate procurement guidance and Homestead's SOPs. Both required either competition or sole source justification when subcontracting. Additionally, the Executive VP's awarding of the subcontract was not consistent with Homestead's SOPs, which stated that most procurement of goods and services for the center would be done on-site. The award of the HLS subcontract without Homestead's involvement by-passed the center's controls over procurement including supervisory oversight (approval required by Center Director and Director of Administrative Services) and segregation of duties (separation of solicitation, bid evaluation and award decision responsibilities).

Disregard of the FAR and ResCare Policy Caused Non-Compliance

The business ethics violations and lack of competition were caused by ResCare's disregard of the FAR and its own Code of Business Ethics and Conduct and procurement policies and procedures. ResCare senior management, including the Executive VP and his subordinate VP, had corporate responsibility for ensuring compliance. Instead they executed the HLS subcontract despite the conflict of interest and without the required competition or sole source justification.

As a result of our audit, ETA issued a memorandum on July 6, 2012, to all its center operators that informed them of their responsibilities to prevent conflicts of interest and the requirements for competition. ETA stated that subcontract awards to a company owned by a former employee may constitute an ethics violation, particularly if the company had an unfair advantage over other prospective subcontractors or if the subcontract was awarded on a sole source basis. In addition, failure to adhere to FAR sections 52.244-2, 52.244-5 and 52.203-13 constitutes default under the center operator contract and ETA may take remedial action including documenting the default in the center operator's past performance record, rescinding approval of an approved purchasing system, and seeking the suspension and/or debarment of the center operator. Further, a center operator may be suspended and/or debarred for failure to timely disclose to the Government, in connection with a subcontract award, credible evidence of a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code or a violation of the civil False Claims Act.

Homestead's academic and career technical training programs were critical to the center's success in meeting Job Corps' mission of providing quality training to at-risk youth. However, ResCare did not ensure Homestead obtained training services that provided the greatest overall benefit for these at-risk youth at a fair price. Additionally, the subcontract award to HLS violated business ethics, competition, and sole source justification requirements of the FAR; thus, it was an improper award. In accordance with the FAR guidance regarding improper activities (Section 52.203-10), we question the fees paid to HLS as part of its cost plus fees subcontract.[5] These fees are claimed by ResCare for reimbursement from the Federal Government and will total approximately $385,000 if HLS completes its subcontract.

RECOMMENDATIONS

We recommend the Assistant Secretary for Employment and Training require the Regional Job Corps Office and ETA CO to:

1. Recover the fees the Department has reimbursed ResCare for HLS' services at Homestead;

2. Take further action against the individuals and companies involved as allowed by the FAR and ResCare's contract;

3. Review all future ResCare subcontracts for procurement compliance and ETA approval prior to award, and ensure ResCare complies with its center operator contract provisions and its own procurement policies and procedures; and

4. Implement procedures for ensuring each subcontract issued by a Job Corps center operator is free of potential conflicts of interest, such as a conflict of interest certification or other documentation to demonstrate no conflict of interest exists.

We appreciate the cooperation and courtesies that ETA, Job Corps, Homestead, and ResCare personnel extended to the Office of Inspector General during this audit. We listed OIG personnel who made major contributions to this report in Appendix F.

Elliot P. Lewis

Elliot P. Lewis
Assistant Inspector General
for Audit

[5] FAR Part 52, subpart 52.203-10 allows DOL to reduce the cost of a contract/subcontract by the amount of profit or fee if the head of the contracting activity determines there was illegal or improper activity.

Appendices

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Appendix A

Background

ETA oversees Job Corps, which administers and manages the Job Corps program. Job Corps' mission is to attract eligible young people, teach them the skills they need to become employable and independent, and place them in meaningful jobs or further education. Job Corps administers the Job Corps program under the leadership of the National Director, supported by the national office of Job Corps and a field network of six regional offices. The Job Corps program provides education, training, and support services to students at 125 Job Corps center campuses located throughout the United States and Puerto Rico. Private contractors and other Federal Agencies operate centers for DOL through competitive contracting processes and interagency agreements, respectively.

ResCare is the contracted operator of Homestead. The center had over 300 students that completed career technical training programs and over 200 students that completed academic programs during Program Year 2010 (ending June 30, 2011). ResCare's headquarters are in Louisville, KY. ResCare operated 14 Job Corps centers under 11 contracts with DOL.

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Appendix B

Objective, Scope, Methodology, and Criteria

Objective

Our objective was to determine if the allegations had merit. To address the allegations, we answered the following question:

> Did the complaint alleging a ResCare executive awarded a Homestead education and training subcontract to another ResCare executive without required competition have merit?

Scope

The OIG conducted a performance audit in response to an anonymous complaint referred to us by ETA, Office of Contracts Management. The complaint alleged that an executive at ResCare, Inc., the contracted operator for Homestead, awarded a subcontract to HLS in violation of government procurement requirements and that a subordinate ResCare executive owned and operated HLS. HLS' subcontract, valued at an estimated $8.4 million, was to provide academic and career technical training at Homestead.[6] ResCare awarded the subcontract in November 2011 with services to begin in January 2012.

This report reflects the audit work conducted to determine the merit of hotline complaint allegations against ResCare. We limited our audit coverage to the areas addressed in the complaint and restricted our testing to audit procedures necessary to fulfill the audit's objective. During the course of our audit work, we determined that issues similar to those identified in this hotline complaint might have also occurred with ResCare's award to RTW, which was the prior subcontractor for academic and career technical training services at Homestead. Based on this information, we determined that we should include a review of RTW's subcontracts in this audit. We conducted our fieldwork at the Homestead Job Corps Center from March 12-15, 2012. We conducted additional fieldwork at our San Francisco, CA, and Washington, DC, offices from May through August 2012.

We conducted this audit in accordance with generally accepted government auditing standards for performance audits. 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.

[6] The subcontract was for two base years plus three 1-year option years. The value for the two base years was $2.9 million and the value of the three option years will based on a DOL provided inflationary rate.

Methodology

We conducted work to determine the merit of the complaint allegation relating to the ResCare subcontract award to HLS for academic and career technical training services at Homestead. To accomplish our audit objective, we obtained an understanding of applicable laws, regulations, and Job Corps policies and procedures. In addition, we interviewed ETA officials, Homestead management and staff, and ResCare executives; reviewed ResCare's Homestead operator contract provisions, Procurement/Property Operations Manual, Homestead SOPs, and the HLS and RTW subcontracts. Our audit covered ResCare's subcontract awards to HLS in 2011 and RTW in 2004 and 2009.

Additionally, we performed the following specific audit procedures:

- We tested the HLS and RTW subcontracts for compliance with applicable sections of the FAR, ResCare's Homestead Center Operator contracts, ResCare corporate policies and Homestead's SOPs.

- We determined the extent to which ResCare employed HLS officials involved in the procurements for HLS by reviewing:
  - ResCare records for the HLS subcontracts to identify the ResCare officials involved in the HLS procurement processes.
  - HLS employment contracts and the relevant ResCare resignation letters.

- We determined questioned costs by reviewing relevant FAR criteria and analyzing the HLS subcontract.
  - FAR Part 52, subpart 52.203-10 allows DOL to reduce the cost of a contract/subcontract by the amount of profit or fee if the head of the contracting activity determines there was illegal or improper activity.

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 and evaluated relevant controls. Our consideration of these controls would not necessarily disclose all matters that might be reportable conditions. In addition, inherent limitations of internal controls, misstatements, losses, or noncompliance may nevertheless occur and not be detected.

<u>Questioned Cost Calculations</u>

HLS Subcontract

In accordance with FAR Subpart 52.203-10—Price or Fee Adjustment for Illegal or Improper Activity, we questioned up to $385,000 for the fees specified in the HLS subcontract. We calculated these fees as follows:

Base Year 1 Fees: $48,823
Base Year 2 Fees: $83,981
Option Year 1 - 3 Fees (based on Base Year 2 Fees): $ 251,943 (83,981 X 3)
Total: $ 384,747 (rounded to $385,000)[7]

Criteria

We used the following criteria to perform this audit:

- Federal Acquisitions Regulations
  - Subpart 44.3, Contractors' Purchasing Systems Reviews
  - Subpart 52.244-2, Subcontracting
  - Subpart 52.244-5, Competition in Subcontracting
  - Subpart 52.203-13, Contractor Code of Business Ethics and Conduct
  - Subpart 52.203-10, Price or Fee Adjustment for Illegal or Improper Activity
- ETA Memorandum, *Proper Subcontracting Practices*, July 6, 2012
- Job Corps' *Policy and Requirements Handbook*
- Homestead Standard Operating Procedures
- ResCare Procurement/Property Operations Manual
- ResCare Operator Contracts for Homestead (2004, 2009, and 2011)
- Reaching Tomorrow's Workforce Subcontracts for Homestead (2004, 2009)
- Human Learning Systems Subcontract for Homestead (2011)

[7] The subcontract was for two base years plus three 1-year option years. The value of the three option years will be based on a DOL provided inflationary rate.

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Appendix C

Acronyms and Abbreviations

CEO	Chief Executive Officer
CO	Contracting Officer
DOL	U.S. Department of Labor
ETA	Employment and Training Administration
FAR	Federal Acquisition Regulation
Homestead	Homestead Job Corps Center, Homestead, FL
HLS	Human Learning Systems
Job Corps	Office of Job Corps
OIG	Office of Inspector General
ResCare	ResCare, Inc.
RTW	Reaching Tomorrows Workforce
SOP	Standard Operating Procedures
VP	Vice President

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Appendix D

ETA's Response to Draft Report

U.S. Department of Labor

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

SEP 2 6 2012

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

FROM: JANE OATES
Assistant Secretary Jane Oates

SUBJECT: Response to the Draft Audit Report – "Conflict of Interest Complaint on a Job Corps Center Operator Subcontract Award Had Merit" Report No. 26-12-004-03-370

This memorandum responds to the subject draft audit report, dated September 14, 2012, Office of the Inspector General's (OIG) Audit Report No. 26-12-004-03-370, *"Conflict of Interest Complaint on a Job Corps Center Operator Subcontract Award Had Merit."* We appreciate the opportunity to provide input to this draft audit report.

Audit Summary:

The OIG's audit objective was to determine if the allegations against ResCare, Inc., in the anonymous complaint referred by the Office of Contracts Management (OCM) had merit. The complaint alleged that an executive at ResCare, Inc., the contracted operator for the Homestead Job Corps Center (Homestead), awarded a subcontract to Human Learning Systems (HLS) in violation of government procurement requirements; and that a subordinate ResCare executive owned and operated HLS. HLS's subcontract, valued at an estimated $8.4 million, was to provide academic and career technical training at Homestead. ResCare awarded the subcontract in November 2011, with services to begin in January 2012.

The OIG found that the complaint had merit. ResCare's subcontract award to HLS violated the Contractor Code of Business Ethics and Conduct, and competition requirements in the Federal Acquisition Regulation (FAR), as well as ResCare's procurement policies and procedures. Practicing under a code of business ethics includes awarding subcontracts that are free of conflicts of interest. ResCare, however, allowed an Executive Vice President (VP) to award the subcontract to a company owned and operated by a subordinate VP, which raised significant conflict of interest concerns. ResCare did not advertise or open the subcontracting opportunity for competition to other contractors or justify the sole source procurement as required by the FAR.

ResCare's response to the OIG Discussion Draft Report indicated that the Atlanta Region Contracting Officer (CO) gave verbal approval to award the subcontract and that the CO had knowledge that the Chief Executive Officer (CEO) of HLS was a ResCare employee at the time of award. On September 14, 2012, in response to the allegations, the Atlanta Region CO

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submitted an affidavit declaring that she did not give verbal approval to ResCare to enter into the subcontract, nor did she have knowledge that the HLS CEO was still a ResCare employee.

The OIG's four recommendations and our response follow:

OIG Recommendation 1: Recover the fees the Department has reimbursed ResCare for HLS services at the Homestead Job Corps Center (Homestead).

Response: Management accepts this recommendation.

OCM will disallow fees associated with the HLS subcontract. In addition, we will also disallow all costs associated with the contract. The CO will issue a final determination letter to ResCare indicating the costs and fees paid to HLS are disallowed and direct ResCare to repay the Government accordingly. The Employment and Training Administration (ETA) anticipates that this process will be completed within 90 days.

We consider this recommendation resolved.

OIG Recommendation 2: Take further action against the individuals and companies involved as allowed by the FAR and ResCare's contract.

Response: Management accepts this recommendation.

ETA will take the following actions against ResCare and HLS, including the principals:

- OCM will withdraw ResCare's Contractor Purchasing System Review (CPSR) approval with an effective date of September 24, 2012 (CPSR withdrawal letter is attached);

- OCM will investigate, and consider initiating steps to suspend or debar both companies including the principal individuals involved; and

- OCM will strongly encourage ResCare to terminate the subcontract with HLS; and either absorb the functions internally, while they re-compete the requirement, or award to a different contractor with which there is no conflict of interest.

We consider this recommendation resolved.

OIG Recommendation 3: Review all future ResCare subcontracts for procurement compliance and ETA approval prior to award, and ensure ResCare complies with its center operator contract provisions and its own procurement policies and procedures.

Response: Management accepts this recommendation.

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OCM's withdrawal of ResCare's CPSR approval will require ResCare to seek the federal CO approval for all subcontracts for each contract they award, prior to executing any subcontract. ResCare's failure to secure consent to subcontract will result in all costs associated with the unapproved subcontract to be disallowed.

We consider this recommendation resolved.

OIG Recommendation 4: Implement procedures for ensuring each subcontract issued by a Job Corps center operator is free of potential conflicts of interest, such as a conflict of interest certification or other documentation to demonstrate no conflict of interest exists.

Response: Management accepts this recommendation.

On July 6, 2012, ETA published a memorandum to all Job Corps operators admonishing them of the consequences of the actual occurrence, or the appearance of conflicts of interest in subcontracting. Further, OCM will require all ETA prime contractors to include a non-conflict of interest certification statement in all subcontracts awarded.

We consider this recommendation resolved.

Based upon the aforementioned responses, we anticipate the draft audit report's recommendations will be resolved and can be closed upon completion of the corrective action. If you have questions concerning this document, please contact Linda K. Heartley, ETA's Head of the Contracting Activity, Office of Contracts Management at (202) 693-3404.

Attachment

cc:

Edna Primrose, Job Corps
Brinda Ruggles, ETA Audit Liaison

U.S. Department of Labor

Employment & Training Administration
John F. Kennedy Federal Building
Room E-350
Boston, MA 02203

September 17, 2012

Res Care Incorporated
ATTN: Richard Myers
Executive Vice President, Youth Services
9901 Linn Station Rd
Louisville, KY 40223

Subject: Withdrawal of Approval of Contractor Purchasing System

Dear Mr. Myers,

As a result of the significant findings contained in the OIG Audit Report Dated September 14, 2012 Number 26-12-004-03-370 and in accordance with FAR 44.305-3 (a)(4), I am here by withdrawing full approval of your purchasing systems as it relates to the systems in place in all of your contracts between ETA/Job Corps and ResCare.

This total withdrawal is effective September 24, 2012, and will remain in place until the Office of Contracts Management conducts a full review of ResCare's purchasing systems.

OCM's withdrawal of ResCare's CPSR approval will require ResCare to seek Contracting Officer approval for all subcontracts for each contract they operate, prior to executing any subcontract. ResCare's failure to secure consent to subcontract will result in all costs associated with the unapproved subcontract to be disallowed.

If you should have any questions please contact me via phone at 617-788-2814 or email at Pendleton.edmond@dol.gov.

Sincerely,

E. Thomas Pendleton
Branch Chief/Contracting Officer
Office of Contracts Management
Boston Regional Office

http://www.doleta.gov/regions/reg01bos

Appendix E

ResCare's Response to Draft Report

ResCare
9901 Linn Station Road
Louisville, Kentucky 40223-3808

(502) 394-2100
www.ResCare.com

September 26, 2012

Elliot P. Lewis
Assistant Inspector General for Audit
Office of Inspector General
United States Department of Labor
200 Constitution Avenue, N.W. Suite S-5512
Washington D.C. 20210

Re: *Res-Care, Inc. Response to Draft Audit Report*
Conflict of Interest Complaint on a Job Corps Center Operator Subcontractor Award Had Merit; Report Number 26-12-004-03-370

Dear Mr. Lewis:

Res-Care, Inc. ("ResCare") respectfully submits this Response to the Draft Audit Report prepared by the Office of Inspector General ("OIG"), Department of Labor ("DOL") regarding the award of an agreement to Human Learning Systems, LLC ("HLS").

ResCare and its management take the allegations, as stated in the Report, very seriously. Throughout OIG's audit, ResCare has cooperated and engaged in a continuing analysis to ascertain whether the complaint has validity. ResCare is committed to being fully compliant with laws, rules, regulations and policies governing its operations, its business lines and every job function, including its Job Corps contracts, agreements and center operations. ResCare has numerous policies and procedures, including a Compliance Program, in place to prevent and detect violations of law, regulation or Company policy and to promote an ethical culture within the organization. As explained herein, ResCare intends to take corrective actions to avoid any perception of unethical or illegal activity, and will continue its efforts to ensure compliance with laws, rules, regulations and policies.

ResCare disputes that it intended to violate the Contractor Code of Business Ethics and Conduct (the "Code"), competition requirements of the Federal Acquisition Regulation ("FAR") or ResCare

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procurement policies and procedures. Instead and as explained herein, ResCare took steps to remove an underperforming partner[1] – Reaching Tomorrows Workforce Corporation ("RTW") – at the direction of DOL, and under exigent circumstances replaced RTW with HLS. The Report does not account for the pressures from DOL to improve the performance of the Homestead Job Corps Center, and does not include any reference to the dramatic improvements in student outcomes that have resulted from HLS's involvement at the Center. ResCare submits that the Report omits important facts regarding how the HLS agreement was procured, approved and implemented. However, in light of the findings of OIG and to avoid any appearance of impropriety, ResCare will take corrective action, as explained herein, in addition to re-procuring the agreement for academic and career technical training services consistent with the Code, the FAR and ResCare's policies and procedures.

FACTUAL BACKGROUND

Job Corps is the nation's largest career technical and education program for youth between the ages of sixteen and twenty-four. The program provides both residential and non-residential services using a training approach that integrates the teaching of academic, technical, and employability skills.

For thirty five years, ResCare has been at the forefront of the design and implementation of the Job Corps program. As the second largest private Job Corps operator in the country, ResCare changes the lives of thousands of economically challenged youth each year, preparing them for academic and vocational self-sufficiency. ResCare is responsible for operating 14 Job Corps Centers throughout the U.S. and Puerto Rico, making it the second largest private contractor. ResCare also serves as a subcontractor for six additional Centers.

ResCare became the prime contractor for the Homestead Job Corps Center on April 1, 2004. ResCare subcontracted with RTW as part of its original procurement of the center contract, and RTW provided academic and career technical training programs and services as a subcontractor through 2011.

In 2011, and in response to pressure and directives from DOL to improve Center operations – particularly the academic and career technical training aspects overseen by RTW – ResCare cancelled RTW's agreement. HLS, a minority owned small business, took over for RTW on the same contract terms and after approval from DOL by Consent to Place Subcontract/Purchase Order. It is this event that led to an anonymous complaint to OIG.

OIG conducted an audit with the following objective: to determine if ResCare awarded a Homestead education and training subcontract to another ResCare executive without required competition.

[1] The Report contains a discussion of ResCare's use of the word "partner". ResCare's use of this word to describe its relationships was never meant to imply that its agreement with HLS was not subject to the FAR or its own procurement policies, and ResCare did not make such a claim, as stated in the Report.

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HISTORY OF ACADEMIC AND CAREER TECHNICAL TRAINING PROGRAMS AND SERVICES AT THE HOMESTEAD JOB CORPS CENTER

As stated, ResCare became the prime contractor for the Homestead Center on April 1, 2004. ResCare subcontracted with RTW as part of its original procurement of the center contract, and RTW provided academic and career technical training programs and services as a subcontractor through 2011.

During its term as a subcontractor, RTW's performance was consistently low. This, in turn, negatively affected student outcomes and Center performance indicators. As a result, on or about February 2, 2011, the DOL National Director, summoned ResCare leadership to her office to discuss ResCare's operations, including the Homestead Job Corps Center. The meeting was attended by DOL National Director, the National Deputy Director of Job Corps, ResCare's, Center Director at Pinellas Job Corps, a ResCare VP of Job Corps, and Rick Myers, Executive Vice President ResCare Youth Services.

The DOL National Director facilitated the meeting. The meeting began with discussions regarding performance of centers other than Homestead, but the conversation quickly changed to discussing the poor performance at Homestead. The meeting lasted nearly an hour. The National Director specifically directed ResCare to take steps to ensure improvements at Homestead. The tone of the meeting was serious. It was made clear by DOL leadership that the poor performance at Homestead was unacceptable and must improve. The National Director referenced multiple pages of performance data on the Homestead operation during the discussion. Of particular note here, the National Director identified, in detail, the lack of performance in the areas of reading, math, High School Diploma achievement and career skills completions. These were the areas that RTW was responsible for under its agreement for the provision of academic and career technical training programs and services. Based on DOL's clear directive, ResCare agreed to take all necessary steps to ensure improvement in student outcomes at the Homestead Center.

On or about November 15, 2011, Regional DOL Operations leadership called ResCare to Atlanta to discuss the poor performance at Homestead. The meeting was attended by DOL Regional Director, ResCare Controller, ResCare's VP of Operations, and Rick Myers, then EVP of ResCare Youth Services. The primary focus of the meeting was to review the actions ResCare had taken to improve performance at Homestead. ResCare reiterated its commitment to improve the performance at Homestead, and although steps had been taken to improve performance, the Regional Director made it very clear that if Center performance did not further improve, Center operations were in serious jeopardy. The dialogue was very candid and specific. It was at this point that a decision was made to replace RTW as the academic and career technical training service provider at the Homestead Job Corps Center.

To ensure education and training supports for center participants, ResCare identified a qualified replacement for RTW: HLS. HLS is a small business, minority-owned provider of education and training services, and it was willing to provide service to the Homestead center on the same financial and service terms as RTW.

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On or about November 18, 2011[2], ResCare's Executive Vice President of Youth Services[3], Rick Myers, contacted ResCare's assigned Branch Chief and Contracting Officer to obtain guidance and direction regarding the method for replacement of RTW as the provider of academic and career technical training programs and services at the Homestead Job Corps Center. Mr. Myers explained that the agreement value would not change, that the terms would remain the same and that the proposed replacement for RTW – HLS – would be a minority-owned small business.[4] Mr. Myers, likewise, informed the Branch Chief and Contracting Officer that the replacement partner would be HLS. The Contract Management staff was very familiar with Benjie Williams, and Mr. Myers disclosed that Benjie Williams was leaving ResCare to start his own Job Corps operation, and would be the principal of HLS.

Although ResCare had an approved Contractors' Purchasing Systems Review ("CPSR") in place, the CPSR did not waive advance notification of the HLS agreement. Furthermore, ResCare sought DOL approval of the HLS agreement due to, among other things, (1) the scrutiny of DOL on the Homestead Job Corps Center's performance, (2) DOL's direction to take steps necessary to improve performance, as stated by DOL in the meetings in February and November of 2011, (3) the importance of academic and career technical training and services to Center performance, (4) the relationship between HLS's principal and ResCare, and (5) the manner in which the contract was being procured. ResCare's sole focus throughout the process was to ensure delivery of quality programs and services to the students supported at the Homestead Job Corps Center.

To that end, Mr. Myers specifically asked the Branch Chief and Contracting Officer what was needed to approve moving forward with replacing RTW with HLS. The Branch Chief and Contracting Officer asked for specific information, including the proposed HLS agreement, a statement of insurance and information related to HLS (previously submitted to OIG in response to Requests for Document Nos. 5 and 7), which was forwarded to Contract Management. On December 23, 2011, ResCare received an approved Consent to Place Subcontract/Purchase Order from DOL allowing ResCare to move forward with replacing RTW with HLS.[5]

Upon receiving the Consent to Place Subcontract/Purchase Order, Mr. Myers contacted DOL Operations Leadership in the Atlanta DOL Regional Office. He left the DOL Regional Director a voice mail that ResCare had received approval from DOL Contract Management Office to replace RTW with HLS at the Homestead Job Corps Center. Mr. Myers then contacted the Division Chief

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[2] ResCare is able to provide phone records verifying the date and time of this call.

[3] Mr. Myers no longer serves in the capacity of Executive Vice President, and is now a Vice President of ResCare.

[4] OIG offers the conclusory statement that the HLS agreement was not obtained at a fair price, but this ignores the fact that HLS undertook the work beginning in 2012 at the same price RTW agreed to in 2009. Thus, the HLS agreement had no increases for inflation or other market factors that could have raised pricing terms.

[5] Although the HLS agreement was signed on November 28 and 29, 2011, the agreement was not effective until January 1, 2012, and the effective date was contingent upon review and approval by DOL. The DOL review and approval process began in November of 2011, prior to the signing of the HLS agreement by either party.

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for DOL Operations, and explained that ResCare had received approval from DOL Contract Management Office to replace RTW with HLS at the Homestead Job Corps Center. It was explained to the Division Chief for DOL Operations that this change was necessary in order to achieve the improved performance that was expected at the Homestead Job Corps Center.

Thus, in sum, prior to canceling the contract of RTW, ResCare contacted DOL informing the Branch Chief and Contracting Officer that due to RTW's lack of performance it had identified HLS as a replacement provider. DOL was informed that HLS's principal was Benjie Williams, a then-current but exiting employee of ResCare. Additionally, ResCare provided DOL with information related to HLS, its assumption of the agreement for academic and career technical training services and the terms of the proposed agreement. At all times, DOL was of aware of RTW's consistently low performance. On December 23, 2011, ResCare received an approved Consent to Place Subcontract/Purchase Order from DOL.

OIG references an unsworn statement of the Branch Chief and Contracting Officer in the Report. Contrary to the conclusions drawn by OIG from the statement, ResCare did not assert that it asked for or obtained "verbal authorization" for the HLS agreement from the Branch Chief and Contracting Officer. Indeed, as stated above, ResCare contacted its Branch Chief and Contracting Officer to inquire as to what information was needed to proceed and to obtain approval. The Branch Chief and Contracting Officer statement further states that she was unaware of Mr. Williams' status with ResCare at the time the consent to subcontract request was submitted. ResCare provided OIG with documentation that established that the consent to subcontract request was sent to the Branch Chief and Contracting Officer on December 5, 2011. Therefore, the unsworn statement and the conclusions in the Report therefrom do not account for the Branch Chief and Contracting Officer's knowledge prior to submission of consent to subcontract on December 5, 2011, including the substance of the information relayed to her during the November 18, 2011 telephone conference with Mr. Myers. In other words, it is entirely plausible that the Branch Chief and Contracting Officer "had no knowledge that Mr. Benjie Williams' [sic] was still an employee of ResCare at the time ResCare submitted the consent to subcontract request for the HLS subcontract", but she was so informed on November 18, 2011 when Mr. Myers disclosed Mr. Williams' affiliation.

Accordingly, the selection of HLS was done with DOL approval, oversight and consent. ResCare relied on DOL and its consideration of the information provided to it through the DOL contract specialist to conduct an analysis of the agreement in compliance with FAR 44.202-2.[6]

[6] Pursuant to FAR 44.202-2, DOL would have considered the following questions:

(1) Is the decision to subcontract consistent with the contractor's approved make-or-buy program, if any (see 15.407-2)?

(2) Is the subcontract for special test equipment, equipment or real property that are available from Government sources?

(3) Is the selection of the particular supplies, equipment, or services technically justified?

(4) Has the contractor complied with the prime contract requirements regarding—

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ResCare's SOP allowed ResCare to award the agreement to HLS – despite knowledge of Mr. Williams' affiliation with ResCare – because there was no other satisfactory contracting entity identified necessary to perform the services required of the agreement due to the urgency of the circumstances, which are explained more fully herein. *See* Homestead Procurement Plan SOP, Subsec. 2, A(7).

Although OIG concludes that the agreement with HLS violated the Contractor Code of Business Ethics and Conduct, ResCare submits that it followed to the extent practicable its SOPs and the Code, placing the academic and career technical training services under a DOL approved agreement that represented the only satisfactory contracting partner available at the time and under the circumstances. Indeed, given DOL's focus on center performance – particularly academic and career technical training services – ResCare had no choice but to move quickly to identify a new provider to replace RTW. Moreover, the Report alleges violations of FAR 52.203-13, Contractor Code of Business Ethics and Conduct, but the conflict of interest provisions in that section relate to

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(i) Small business subcontracting, including, if applicable, its plan for subcontracting with small, veteran-owned, service-disabled veteran-owned, HUBZone, small disadvantaged and women-owned small business concerns (see Part 19); and

(ii) Purchase from nonprofit agencies designated by the Committee for Purchase From People Who Are Blind or Severely Disabled (Javits-Wagner-O'Day Act (41 U.S.C. 48)) (see Part 8)?

(5) Was adequate price competition obtained or its absence properly justified?

(6) Did the contractor adequately assess and dispose of subcontractors' alternate proposals, if offered?

(7) Does the contractor have a sound basis for selecting and determining the responsibility of the particular subcontractor?

(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?

(9) Is the proposed subcontract type appropriate for the risks involved and consistent with current policy?

(10) Has adequate consideration been obtained for any proposed subcontract that will involve the use of Government-provided equipment and real property?

(11) Has the contractor adequately and reasonably translated prime contract technical requirements into subcontract requirements?

(12) Does the prime contractor comply with applicable cost accounting standards for awarding the subcontract?

(13) Is the proposed subcontractor in the Excluded Parties List System (see Subpart 9.4)?

(b) Particularly careful and thorough consideration under paragraph (a) of this section is necessary when—

(1) The prime contractor's purchasing system or performance is inadequate;

(2) Close working relationships or ownership affiliations between the prime and subcontractor may preclude free competition or result in higher prices;

(3) Subcontracts are proposed for award on a non-competitive basis, at prices that appear unreasonable, or at prices higher than those offered to the Government in comparable circumstances; or

(4) Subcontracts are proposed on a cost-reimbursement, time-and-materials, or labor-hour basis.

DOL's issuance of the December 23, 2011 Consent to Place Subcontract/Purchase Order was an indication that each of the above-referenced questions had been considered and addressed.

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conflicts of interest by federal officials under Title 18 of the U.S. Code, which are inapplicable here.[7]

STUDENT OUTCOMES IMPROVED DRAMATICALLY AFTER RESCARE REPLACED RTW

Although OIG recognizes the vital importance of the Center's academic and career technical training programs, the Report does not recognize the marked improvements in student outcomes achieved after RTW was replaced. Figure 1 is a comparative analysis of Homestead Job Corps Center OMS Performance for RTW and HLS based on Center Information System data.

Figure 1 also shows the stark contrast between RTW's sub-par performance, which bottomed out at 68.8 in August of 2011, and HLS's performance, which never dropped below 93. Indeed, in comparative eight (8) month periods, HLS's performance was eleven (11) points better on average.

Fig 1

Homestead JCC OMS Performance: Onsite Measures and Overall Comparison

	Monthly Performance from May 2011 - December 2011								Monthly Performance from January 2012 - August 2012								Difference between Cumulative May - December and Cumulative January - August
Measure	May**	June**	July	August	September	October	November	December	January	February	March	April	May	June	July**	August**	
GED/HSD	117.0	132.1	94.8	69.6	81.8	105.0	90.0	115.2	113.7	127.3	127.9	128.1	133.4	132.9	174.8	138.5	31.5
CTT	112.0	127.7	79.9	55.6	87.0	86.2	75.3	105.6	101.2	96.6	91.5	124.0	115.9	112.1	123.2	129.6	14.0
CREDENTIAL	120.8	133.5	87.2	75.0	100.0	114.3	114.3	125.0	108.8	127.5	118.3	148.7	146.3	143.4	155.6	160.0	19.4
COMBO	133.7	135.0	100.6	49.8	82.5	107.3	98.4	105.7	129.2	118.7	118.3	148.2	148.9	142.7	188.4	162.8	34.1
LITERACY	70.4	96.7	89.5	91.9	88.7	107.4	73.1	81.7	105.8	73.0	89.8	82.6	98.7	81.3	104.5	79.4	0.6
NUMERACY	60.8	78.9	87.7	65.1	79.3	105.4	63.0	88.1	75.5	85.2	84.8	96.8	91.4	85.4	84.0	57.4	2.1
OVERALL	89.0	103.3	87.9	68.8	82.9	98.3	90.4	92.3	98.0	93.5	94.8	105.3	101.1	101.6	112.1	107.5	11.0

DATA SOURCE: OMS-10P Reports in CIS
**Data adjusted to reflect PY11 Report Card Goals and Weights

It was ResCare's focus on improving student outcomes and ensuring Center success that drove the decisions made with respect to RTW and HLS and not an intent to violate the law, ethics or its own policies and procedures. ResCare's belief that this approach was in the best interest of its students was bolstered by what ResCare thought was approval from DOL. ResCare is and remains a committed partner to DOL in its mission to help young people improve the quality of their lives through vocational and academic training.

Academic and career technical training programs and services are vital to the Homestead Job Corps Center's operations. Based on measurable DOL performance requirements for the Homestead Center, academic and career technical training services represent one hundred (100) percent of OMS performance expectations for ResCare. Therefore, if these services were to fail, the Center fails and students cannot achieve their goals and the goals of DOL.

Moreover, ResCare was concerned that by allowing the academic and career technical training programs and services to lapse without a qualified contractor able to perform the services (or

[7] The Report states that a center operator may be suspended or debarred for failure to timely disclose to the government in connection with a subcontract award, credible evidence of a violation of federal criminal law involving fraud, conflict of interest, bribery or gratuity violations found in Title 18 of the U.S. Code or a violation of Civil False Claims Act. The Report fails to state what section of Title 18 was allegedly violated or how the Civil False Claims Act was allegedly violated. Those provisions appear inapplicable to the conduct alleged in the Report.

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continue under RTW's agreement), it would violate its own contract with DOL, as well as the FAR. Furthermore, ResCare's SOPs allowed ResCare to award the agreement to HLS – despite knowledge of Mr. Williams' affiliation with ResCare – because there was no other satisfactory contracting entity identified to perform the services required of the agreement under the exigent circumstances. *See* Homestead Procurement Plan SOP, Subsec. 2, A(7).

ResCare's approved decision to contract with HLS was based on documented justifications and direction from DOL. As stated above, RTW's poor performance was documented with the Homestead Corporate Assessments previously submitted to OIG during this investigation and in the OMS Reports compiled by DOL, as well as Center Information System data. Finally, as shown in Figure 1, HLS has shown a dramatic improvement in education and training performance, thereby improving the overall quality of Center operations to the benefit of the students and DOL.

<u>ResCare Will Mitigate Any Perceived Conflict or Alleged Violation of the FAR by Conducting an Open Competition for the Subcontract</u>

To avoid any appearance of impropriety and to ensure compliance with applicable law, ResCare will take corrective action, consistent with the recommendations of OIG.[8]

ResCare has initiated a review of all Standard Operating Procedures and procurement policies to ensure compliance with FAR requirements and contract provisions. All Standard Operating Procedures and procurement policies will be revised, as needed, and all staff responsible for implementing same will be retrained on implementation and compliance.

ResCare will retrain Job Corps Center Directors and Company executives over Job Corps operations involved in or associated with procurements of goods and services to ensure compliance with FAR requirements, contract provisions and internal policies and procedures. This will include implementing procedures for ensuring that contract and subcontract awards are free of potential conflicts of interest. The training will occur on September 27, 2012 in St. Petersburg, Florida, and will be provided to all Job Corps Center Directors and Company executives over Job Corps operations by ResCare's Chief Compliance Officer.

Further, ResCare will mitigate any perceived conflict or alleged violation by conducting an open competition for the agreement for education and training services at the Homestead Center. The Request for Proposals will be issued as soon as practicable, but no later than year end of 2012, and

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[8] OIG contends that FAR 52.203-10 allows DOL to reduce the cost of a contract/subcontract by the amount of profit or fee if the head of the contracting activity determines there was illegal or improper activity. FAR 52.203-10 only permits reduction in the amount of profit or fee if the head of the contracting activity or designee determines that there was a violation of subsection 27(a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended. Those provisions address restrictions on obtaining and disclosing certain information and actions required when federal procurement officers are contacted regarding non-federal employment. Those provisions are not relevant to the issues raised here.

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will follow FAR requirements and ResCare policies and SOPs. As part of this process, ResCare will put HLS on notice – pursuant to the terms of the agreement – that the agreement will be terminated.

Finally, ResCare will work with DOL to ensure procurement compliance and DOL approval prior to award and to ensure compliance with center operator contract provisions and its own procurement policies and procedures.

CONCLUSION

The circumstances identified in the Report were caused by ResCare's focus on student outcomes and Center performance. ResCare did nothing to intentionally disregard applicable law or policy. ResCare values its partnerships with DOL, and is committed to providing excellent service to the Job Corps program now and in the future.

Sincerely,

Steve Hendricks
Executive Vice President, Res-Care, Inc.

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Appendix F

Acknowledgements

Key contributors to this report were Ray Armada (Audit Director), Heather T. Atkins (Audit Manager), Ann Marie Lawrence (Acting Auditor-In-Charge), and Elizabeth Garcia (Auditor).

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TO REPORT FRAUD, WASTE OR ABUSE, PLEASE CONTACT:

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