

ETA's Response to Draft Report

U.S. Department of Labor

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



SEP 20 2012

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

FROM: JANE OATES *Jane Oates*
Assistant Secretary

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

OIG ResCare Conflict of Interest Audit

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.

OIG ResCare Conflict of Interest Audit

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

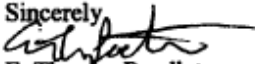
Dear Mr. Myers,

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>

ResCare's Response to Draft Report



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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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September 26, 2012

Elliot P. Lewis

Page 2

procurement policies and procedures. Instead and as explained herein, ResCare took steps to remove an underperforming partner¹ – 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.

September 26, 2012
Elliot P. Lewis
Page 3

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.

September 26, 2012

Elliot P. Lewis

Page 4

On or about November 18, 2011², ResCare's Executive Vice President of Youth Services³, 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

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.

September 26, 2012
Elliot P. Lewis
Page 5

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—

September 26, 2012
Elliot P. Lewis
Page 6

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.

September 26, 2012
 Elliot P. Lewis
 Page 7

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

Measure	Monthly Performance from May 2011 - December 2011								Monthly Performance from January 2012 - August 2012								Difference between Cumulative May - December and Cumulative January - August
	May**	June**	July	August	September	October	November	December	January	February	March	April	May	June	July**	August**	
GED/HSO	117.0	122.1	94.8	68.8	81.8	108.8	90.8	116.2	113.7	127.3	127.9	128.1	135.4	132.9	174.9	138.5	31.5
CIT	112.0	127.7	79.9	68.8	87.9	86.3	75.3	106.6	101.2	96.6	81.9	128.0	116.9	113.1	123.2	128.6	14.0
CREDENTIAL	120.8	123.5	87.2	75.0	100.0	114.3	114.5	120.0	100.8	127.8	116.3	148.7	146.3	143.4	152.4	168.0	19.4
COMBO	133.7	135.9	100.6	48.8	82.8	107.3	98.4	120.7	129.2	158.7	118.3	148.2	148.3	142.7	188.4	162.8	34.1
LITERACY	76.4	96.7	89.5	91.6	86.7	107.4	73.1	81.7	105.8	73.0	89.6	82.6	98.7	81.3	104.6	79.4	0.6
NUMERACY	88.8	78.9	87.7	65.1	79.3	105.4	83.8	88.1	75.5	85.2	84.8	94.8	91.4	85.4	84.0	57.4	2.1
OVERALL	89.3	103.3	87.9	68.8	82.9	96.3	90.4	92.3	88.0	93.6	84.8	106.3	107.1	109.6	112.1	107.8	11.0

DATA SOURCE: OMS-18P Reports in CIS
 **Data adjusted to reflect FY11 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.

September 26, 2012
Elliot P. Lewis
Page 8

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.

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

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

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.

September 26, 2012
Elliot P. Lewis
Page 9

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.