

Combined Response from ETA and OASAM to the Draft Report

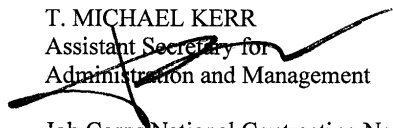
U.S. Department of Labor



JUN 13 2013

MEMORANDUM FOR ELLIOT P. LEWIS
Assistant Inspector General for Audit

FROM: GERRI FIALA 
Acting Assistant Secretary for
Employment and Training

T. MICHAEL KERR 
Assistant Secretary for
Administration and Management

SUBJECT: Job Corps National Contracting Needs Improvement to
Ensure Best Value (Draft Audit Report 26-13-004-03-370)

This responds to the Office of Inspector General (OIG) Draft Audit Report 26-13-004-03-370, "Job Corps National Contracting Needs Improvement to Ensure Best Value." As discussed more fully below, management accepts all four of the OIG's specific recommendations to further improve our procurement practices.

We note at the outset, however, that we believe the ten sole source National Job Corps contracts, which were the subject of this audit, were appropriately awarded in accordance with Federal Acquisition Regulation (FAR) and Department of Labor (DOL) requirements.

Although sole source contracts were appropriate in the Job Corps circumstances discussed in this audit, management acknowledges that competition for contractor services, where competition is possible, is desirable for achieving the best value. The Department has demonstrated its longstanding commitment to competitive procurements and has consistently ranked among the top ten Federal agencies with regard to contract competition. For FY 2012, more than 80 percent of DOL contract dollars were awarded through competition. To date in FY 2013 the Department has competed more than 83 percent of its contract dollars.

Background on Job Corps and National Training Contracts

Job Corps, under the direction of the Assistant Secretary for Employment and Training, offers career development services to at-risk young women and men, ages 16 to 24, and career technical training in more than 100 occupational areas including green job training in advanced manufacturing, automotive, and construction careers at more than 125 campuses throughout the United States and Puerto Rico. Students also receive academic training, including basic reading and math, GED attainment, college preparatory courses, and Limited English Proficiency courses. Courses in independent living, employability skills, and social skills are offered in order to help students transition into the workplace.

Job Corps distinguishes itself from other training programs by providing students with residential services as well as with hands-on training and experience that leads to an industry-recognized credential. This approach is evidenced in Job Corps' work-based learning program, which requires students to participate in real work environments before their training is completed. The work-based learning program links classroom and career training to practical, on-the-job activities. The training provided by the national contractors share these same features, combining classroom and practical learning based on industry standards that enables students to receive hands-on training.

As noted in Appendix A of the draft audit report, Job Corps administers several national support contracts to include: national health and wellness consultants, the Job Corps National Call Center, Job Corps nationwide outreach efforts, and nationwide curriculum development. Job Corps' Regional Offices administer contracts and perform oversight activities, which include oversight and ongoing monitoring of Outreach and Admissions and Career Transition Services contracts.

Finding 1 – Thirteen Job Corps National Contracts Awarded Without Adequate Sole Source Justification or Key Contracting Documentation.

The draft audit report finds that 13 contracts were awarded without competition, proper evaluation of competing contractors, or required contract documentation. As referenced in Exhibit 1 of the draft report, 11 of the contracts were awarded by the Office of Assistant Secretary for Administration and Management (OASAM)—eight were Job Corps national training contracts (2008¹), one was a career technical training strategies contract (2008), one was a media outreach contract (2008), and one was a communications support contract (2009). The remaining two contracts were awarded in 2012 by the Employment and Training Administration (ETA)—one for facilities support services and the other for data processing support services. Management concurs that ten of these contracts were awarded on a sole source basis. As we explain below, these sole source contracts were awarded in conformance with the requirements of the FAR and Departmental policy and provide the needed services at a fair and reasonable price.

Eight 2008 Job Corps National Training Contracts

The procurement processes that resulted in the eight 2008 national training contracts started with the OASAM contracting officer and Job Corps working together to identify the requirements for these contracts. Consistent with FAR Part 10, the OASAM contracting officer conducted market research to assess the marketplace for firms capable of providing these services. The OASAM contracting officer posted a sources sought notice, under FAR Part 5, in Federal Business Opportunities (FedBizOpps).² This notice was open for response from providers for 47 calendar days (substantially longer than the FAR-specified 15 days). No companies responded to the

¹ The contracting officer awarded the eight national training contracts in December 2007, with an effective date of January 2008. Hereinafter, these contracts will be referred to as the 2008 national training contracts.

² FedBizOpps is a web-based system for posting solicitations and other procurement-related documents to the Internet and it has been designated by the Federal Acquisition Regulation as the mandatory "government wide point of entry for the posting government business opportunities greater than \$25,000".

notice. Had any companies responded, the contracting officer would have assessed their capability to provide these services.

Job Corps included the results of this market research in its submission to the Department's Procurement Review Board (PRB).³ The PRB serves as an additional internal control, not required by the FAR, that advises the Chief Acquisition Officer (CAO) on certain proposed procurement actions, including sole source awards. In addition to the market research results, Job Corps provided a summary of the unique qualifications of the respective incumbent national training contractors. Those unique qualifications, gleaned from the contract files, can be summarized as follows:

- The proposed contractors have a strong affiliation with their respective industry partners and, therefore, direct access to a large nation-wide membership related to trades and national and local apprenticeship programs, which is necessary for student success while in the program and after matriculation from the Job Corps training program;
- The proposed contractors' instructional capability and capacity, including a large cadre of sufficiently qualified and experienced instructors that have the ability to provide training specifically developed and tailored for the learning level of Job Corps students;
- The proposed contractors' credibility with the trades industry, including industry's ability to recognize training by the contractors as credit toward meeting the requirements of becoming a journey-level worker;
- The proposed contractors' training curriculum is based on industry standards; and
- The proposed contractors' have a positive record of apprenticeship and/or job placement.

Based on Job Corps' submission to the PRB in support of sole source awards to these entities, the PRB voted in favor of recommending that the CAO approve these actions.⁴ The CAO did so under the authority provided by the Competition in Contracting Act, and the implementing regulations at FAR subpart 6.3.

In accordance with FAR Parts 15 and 16, prior to making the awards the contracting officer conducted the appropriate negotiations with each contractor to ensure prices were fair and reasonable, and reviewed certified cost and price data. The prices were found to be fair and reasonable using cost analysis conducted in accordance with FAR 16.104(c). The cost proposals were reviewed by the OASAM Office of Cost Determination to determine the appropriate indirect cost rates and verify the appropriateness of the cost accounting system of each

³ Pursuant to the Department of Labor's Manual Series (DLMS) 2-836, the PRB is an advisory board comprised of designees from OASAM, the Office of the Solicitor (SOL), the Office of the Chief Financial Officer (OCFO), and the Office of the Assistant Secretary for Policy. Among other things, the PRB is tasked with making recommendations to the Chief Acquisition Officer (CAO) on all proposed sole source contracts to be awarded having an estimated value over \$150,000. DLMS 2-836 also states that any proposed action from any of the board member agencies requires the recusal of that member from participating in deliberations on the proposed action. Each designee advises the PRB on specific aspects of a proposed action. For example, the SOL designee advises the PRB on legal sufficiency, while the OCFO designee advises on financial matters and internal controls. In its over 25-year history, no PRB-recommended CAO decision has been overturned by any tribunal.

⁴ As outlined in DLMS 2, Chapter 800, approval of a PRB recommendation by the CAO does not constitute an award; an acquisition may only be awarded by an acquisition or assistance official. The CAO's approval "authorizes the initiation of a non-competitive acquisition," while "[d]isapproval by the CAO of a proposed acquisition will mean that the acquisition instrument may be awarded only using full and open competition."

offeror. The reasonableness of each cost element was reviewed in accordance with FAR 15.404-1(c) to determine how closely it matched the data; for example, timecards to verify actual salary rates and fringe benefits currently provided. Judgment values such as proposed labor cost escalation were compared to published forecasts from the Bureau of Labor Statistics. The amount of fee was reviewed in accordance with the Workforce Investment Act requirements for a minimum one percent fee. The sum of reasonable prices for each element was the basis for establishing a total fair and reasonable price.

Eight 2013 National Training Contracts

As previously noted, this audit was conducted on the eight 2008 national training contracts. ETA/Job Corps recently completed the sole source award of the eight national training contracts for continued service for a base year and four option years, with effective dates in June 2013.

ETA, through the ETA contracting officer and Job Corps, followed similar steps in conducting this procurement action to the 2008 national training contracts. ETA identified the program requirements for these procurements. The ETA contracting officer posted sources sought notices on FedBizOpps for each contract, under FAR Part 5, similar to the action taken by the OASAM contracting officer in 2008. The announcements were open for 15 calendar days in December 2011, consistent with FAR requirements. Only three of the eight postings received responses from organizations other than the incumbent, and none were considered to have met the rating criteria set by the contracting officer: 1) History of providing career technical training to disadvantaged youth; 2) Level of familiarity with the Job Corps program; 3) Affiliation with registered apprenticeship programs or employers in the industry on a national, regional, and local level; 4) Ability to deliver existing training curricula and develop new curricula; and 5) Quality of existing instructional staff. In order for an entity to be determined capable they must have met each of the five criteria.⁵

- One company responded to the announcement to provide training to carpenters but was determined not meet any of the five rating criteria.
- Three companies responded to the announcement to provide residential construction training. Two of the companies failed to meet any of the five criteria. The other failed to meet two of the five criteria.
- One company responded to the announcement to provide training for heavy equipment and asphalt paving but failed to meet any of the five criteria.

In completing these awards, ETA/Job Corps sought and received recommendations in favor of the sole source award of these contracts from the PRB and, based on the PRB's recommendation, approval from the CAO under FAR 6.302-1, the implementing regulation allowing for sole source contracts when only one source is available to meet the requirements. Finally, appropriate negotiations with each contractor were conducted to ensure prices were fair and reasonable and a review of certified cost and price data was conducted, consistent with the process outlined above for the 2008 awards.

⁵ The number of responses to a sources sought notice and the evaluation of the responses are generally viewed as procurement sensitive or source selection information under the FAR. In the event of public release of this report, this information should be redacted.

Two Additional Job Corps Sole Source Contracts

The draft audit report finds that two additional contracts (PB Dewberry and IMPAQ International) should have been subjected to competition.

The sole source contract award to PB Dewberry was necessitated by several protests to the Department's efforts to compete this requirement. To ensure continuity of services while the protests were resolved, ETA/Job Corps submitted documentation to the PRB demonstrating why a sole source award was appropriate in this case. The PRB recommended approval of this action, and the CAO approved this sole source award under the authority in FAR Part 6.302-1. Ultimately, the Department successfully resolved the last round of protests in connection with this requirement and awarded a contract – which resulted from a competitive procurement process – to a new contractor on September 28, 2012, with a base period of performance of January 16, 2013 through January 15, 2014 (the period of performance was delayed due to protest).

Due to procurement delays, the sole source contract to IMPAQ International was made to ensure continuity of services while ETA competed and awarded a new contract. DOL followed the PRB procedures discussed above, ultimately resulting in the CAO approving the sole source award in accordance with FAR Part 6.302-1. ETA successfully competed the services and awarded a new follow-on contract to IMPAQ International on June 28, 2012, with a base period of performance of July 13, 2012 through July 12, 2014.

Three Remaining Job Corps Contracts

The draft audit report acknowledges that the three remaining contracts – for media outreach, communications support, and career technical training strategies – were awarded competitively but cited missing key file documentation necessary to determine if appropriate competitive procedures were followed. Management's response follows:

McNeely, Piggott, & Fox Public Relations, LLC, blanket purchase agreement (BPA) for media outreach – The draft audit report found that this contract lacked BPA documentation and that the BPA competitive procedures were inadequate. It is unclear what information is considered missing, and specifically what BPA procedures were inadequate. OASAM sent Request for Quotes to qualified vendors and awarded the BPA based on an evaluation of the quotes received. The required documentation is in the contract file.

Looking ahead, the Department anticipates a new competitive acquisition for media outreach services in FY 2014. The current delivery order against the BPA will expire in September 2013, so the Department anticipates that we will continue to rely on the BPA, pending completion of the new competitive procurement process.

McNeely, Piggott, & Fox Public Relations, LLC, contract for communications support – The draft audit report finds that this contract lacked competitive range documentation. Competitive range documentation is not required when the contracting officer makes an award based on initial offers. The source selection documentation contained in the contract file indicates that the contracting officer awarded the contract based on initial offers. The draft audit report also noted

a lack of comparative assessment; however, the contract specialist's award recommendation to the contracting officer included a comparative assessment of the 13 offerors that submitted proposals. Lastly, the draft audit report found that there was no support for bid cost selected, and that the file lacked EPLS documentation. This was a negotiated procurement awarded in accordance with FAR Part 15, Contracting by Negotiation. In negotiated procurements, contractors submit proposals and not bids. The support for the award was included in the award recommendation prepared by the contract specialist, and in the contracting officer's award decision memorandum. EPLS documentation is only required for the successful offeror. All of the required documents are located in the pre-award file.

The Ashlin Management Group, Inc. contract for career technical training strategies – The draft audit report finds the contract file was missing competitive range documentation, solicitation documents and EPLS documentation. This documentation is available in the pre-award file for this contract.

Finding 2 – Claimed Costs for Job Corps National Contracts Were Not Always Reviewed and Supported.

As outlined in responses to Recommendations 2 and 3 below, ETA management is taking steps to change the payment system from a drawdown (prior to incurred cost) to an invoicing procedure after services rendered and will require contractors to invoice for services rendered in accordance with the FAR.

Recommendations

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

OIG Recommendation 1: Develop and implement procedures and provide training as needed to ensure contracting officers, contracting specialist, and contracting officers' representative are up-to-date on applicable FAR and DOL requirements before awarding and managing sole source or competitive contracts.

Response: Management accepts this recommendation. By way of background, as management has reported in response to other recent OIG audits, in January 2012 the Department began sweeping procurement reforms and training to address weaknesses in the procurement process. More specifically:

- During Q4 FY 2011 and Q1 FY 2012, OASAM, in consultation with SOL, provided procurement integrity and ethics training to more than 1,200 DOL executives, managers and acquisition personnel in the National Office and regions;
- Provided training on unauthorized commitments/ratifications to the DOL acquisition workforce;
- Conducted strategic contract administration reviews to establish how well contracts are administered by the contracting officer representatives (COR); and
- Provided guidance on post-award contract oversight and surveillance requiring a COR for all contracts over \$150,000.

Where applicable, management has also incorporated the above procurement reforms into Department of Labor Manual Series (DLMS) 2-888 Federal Acquisition Certification in Contracting (August, 2012) and DLMS 2-889 Federal Acquisition Certification in Contracting Officer Representatives (updated August, 2012). During regular Procurement Council meetings with leadership from the Department's acquisition community, the OASAM Office of Acquisition Management Services emphasizes the need to minimize the use of sole source contracting and competitively procure goods and services whenever practicable.

In addition, all ETA staff currently awarding and administering the contracts discussed in this draft audit report have received training on contract award and administration. ETA has established several procurement "standard operating procedures" to provide readily available reference information for staff. This information is located on a shared network drive. CORs have received extensive contract administration training necessary to ensure contractors are in compliance with all procurement laws and the awarded contract. Specifically, Job Corps CORs received contract administration training June 21 and 26, July 11 and 24, and August 16, 2012. They also received COR responsibility training May 15, 2013, and are scheduled to receive follow-up training on July 17, 2013.

OIG Recommendation 2: Review future Job Corps' National contracts for FAR and DOL compliance prior to approving any procurement actions.

Response: Management accepts this recommendation. For the reasons discussed above, management believes that the Job Corps national training contracts were awarded in accordance with the FAR and DOL policy, including the eight contracts awarded for these training services. Also, in the contract negotiations for the 2013 awards, the payment system was revised from a drawdown (prior to incurred cost) to an invoicing procedure after services are rendered. In addition, the contractors' proposals were reviewed by the OASAM Office of Cost Determination for reasonableness, a process that is undertaken each time certified cost and pricing data is required.

OIG Recommendation 3: Develop standard operating procedures using the Standards for Internal Control in the Federal Government to develop and implement the missing procedures for requesting and reviewing invoices from Job Corps national contractors.

Response: Management accepts this recommendation. ETA self-identified the inadequacy of the current system in 2012 and took action to correct the invoicing and payment procedures in the new national training contracts. ETA will require the contractors to invoice for services rendered in accordance with the FAR. In addition, the COR has been trained to require supporting documentation for costs incurred. The contracting officer will inspect the CORs files semi-annually.

OIG Recommendation 4: Recover questioned costs as appropriate on the amount of cost claimed that lacked supporting documentation for the other eight Job Corps national training contracts.

Response: Management accepts this recommendation. ETA agrees that contractors have not always provided proper evidence that expenses invoiced and paid were actually incurred. ETA

will have the COR review supporting documentation and recover costs as appropriate. This action will be completed by the beginning of Q4 FY13.

cc: Grace Kilbane, ETA
Linda Heartley, ETA
William Thompson, ETA
Lisa Lahrman, ETA
Kevin Brumback, ETA
Linda Marshall, ETA
Jennifer Richards, ETA
Ed Hugler, OASAM
Al Stewart, OASAM
Sandra Foster, OASAM