

# Department of Labor

Office of Inspector General—Office of Audit

**MINE SAFETY AND  
HEALTH ADMINISTRATION**



**PROCUREMENTS SHOWED A PATTERN  
OF DISREGARD FOR FEDERAL AND DOL  
ACQUISITION RULES AND REQUIREMENTS**

**Date Issued: October 29, 2004  
Report Number: 25-05-001-06-001**

# BRIEFLY...

Highlights of Report Number: 25-05-001-06-001, to the Deputy Secretary of Labor.

## WHY READ THE REPORT

The Office of Inspector General (OIG) is responsible for assessing allegations against any DOL agency that involve fraud, waste, or abuse. This report provides the OIG's findings with respect to allegations concerning Mine Safety and Health Administration (MSHA) management in the areas of procurement and related personnel matters.

## WHY OIG DID THE AUDIT

Within the DOL, MSHA is one of only two agencies that was granted independent procurement authority.

Beginning in May 2002 and continuing until May 2003, the OIG received a series of allegations regarding MSHA. The allegations involved MSHA's procurement and contracting procedures, Government travel and purchase card usage, computer security, and personnel issues.

The objective of our audit was to determine the merits of the allegations and, for those that had merit, recommend appropriate corrective action. Our audit period was June 1, 2000 through December 31, 2002.

## 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/2005/25-05-001-06-001.pdf>

OCTOBER 2004

## MINE SAFETY AND HEALTH ADMINISTRATION PROCUREMENTS SHOWED A PATTERN OF DISREGARD FOR FEDERAL AND DOL ACQUISITION RULES AND REQUIREMENTS

### WHAT OIG FOUND

The OIG found that seven allegations could not be substantiated. However, we did find a number of allegations that had merit. For the period June 2000 through December 2002, we found that:

1. MSHA did not always ensure the Government received best value or that vendors were treated fairly in the award of contracts.
2. MSHA circumvented requirements to procure office furniture and travel management services from required sources.
3. A potential conflict of interest existed in the award of contracts to a company owned by a Contracting Officer's spouse.
4. Excessive unauthorized commitments and ratifications were made.
5. Deficiencies existed in how MSHA administered some of its contracts.

The overall cause for the problems we identified was a long-term MSHA-wide history of career and non-career management that accepted and fostered a lack of commitment to procurement principles, which was facilitated by a lack of segregation of the procurement function from the program. This lack of segregation allowed program staff to exert undue influence over the procurement process.

That environment resulted in management being unable to assure that contracts were in the best interest of the Government, and that all eligible contractors were afforded a fair opportunity to provide supplies or services to MSHA.

We could not conclude on the allegations of retaliation.

### WHAT OIG RECOMMENDED

We recommended that the Deputy Secretary of Labor direct the DOL Procurement Executive to rescind MSHA's procurement authority, reassign such authority, and ensure that it is completely independent of MSHA.

The Deputy Secretary responded that it will be important to assess the full breadth and effectiveness of recent procurement reforms to make an informed judgment on our recommendation.

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## **Executive Summary**

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The Mine Safety and Health Administration (MSHA) was transferred from the Department of the Interior (where it was called the Mine Enforcement and Safety Administration) to the Department of Labor (DOL) with the enactment of the Federal Mine Safety and Health Act of 1977. Within the DOL, MSHA is one of only two agencies that was granted acquisition authority for the purchase, lease and renewal of lease(s) of Federal Information Processing (FIP) resources.

Beginning in May 2002 and continuing until May 2003, the Office of Inspector General (OIG) received a series of allegations regarding MSHA. The allegations involved MSHA's procurement and contracting procedures, Government travel and purchase card usage, computer security, and personnel issues. The objective of our audit was to determine the merits of the allegations and, for those that were substantiated, recommend appropriate corrective action. Our audit period was June 1, 2000 through December 31, 2002.

### **RESULTS**

The following table presents each allegation and our conclusion on whether the allegation was substantiated.

<b>ALLEGATION</b>	<b>AUDIT CONCLUSION</b>
An MSHA executive directed the award of contracts to friends.	Not Substantiated
The hiring of a Deputy Assistant Secretary created a conflict of interest.	Not Substantiated
A Deputy Assistant Secretary benefited financially from the contract awarded to Ben W. Sheppard & Associates.	Not Substantiated
Training provided by Ben W. Sheppard & Associates could have been obtained free of charge from MSHA or other educational institutions.	Not Substantiated
MSHA forced a Contracting Officer in headquarters to retire because the agency did not want him talking about contracting misdeeds.	Not Substantiated
Illegal software was loaded on MSHA computers and payments were made to MSHA personnel in connection with the improper actions and covered up by management personnel.	Not Substantiated
The Office of the Assistant Secretary for Administration and Management (OASAM) tried to hire an MSHA employee while the employee was on administrative leave for misuse of a purchase card and/or the employee was detailed to OASAM with unlimited warrant authority while on administrative leave.	Not Substantiated
Performance Associates International (PAI) was not uniquely qualified to evaluate training programs; therefore, the sole source award was not properly justified.	Substantiated (See Finding 1)
MSHA management did not intend to open the contract being performed by PAI to competition as required by procurement law.	Substantiated (See Finding 1)

***MSHA Procurements Showed a Pattern of Disregard  
for Federal and DOL Acquisition Rules and Requirements***

<b>ALLEGATION</b>	<b>AUDIT CONCLUSION</b>
Ben W. Sheppard & Associates was not uniquely qualified to provide training; therefore, the sole source award was not properly justified.	Substantiated (See Finding 1)
MSHA program officials verbally ordered computers for the Arlington office move before a procurement action had been taken, and the lowest bidder was not used.	Substantiated (See Finding 1)
High dollar procurements were placed without competition, or consolidation, by using small purchase vehicles and increasing the procurement by millions of dollars over time.	Substantiated (See Finding 1)
An MSHA Contracting Officer was directed by supervisory personnel to process two purchase orders to cover unauthorized commitments totaling over \$600,000.	Substantiated (See Finding 1)
MSHA was planning to purchase system furniture from other than a required source.	Substantiated (See Finding 2)
MSHA management approved illegal procurement of furniture for the Denver office without consideration of the cost or regulations.	Substantiated (See Finding 2)
An MSHA employee contracted with a business owned by a spouse.	Substantiated (See Finding 3)
MSHA used unauthorized commitments as an accepted practice.	Substantiated (See Finding 4)
An MSHA employee was transferred to OASAM for not assisting in covering up improper procurement actions and was terminated illegally by MSHA for misuse of a Government travel card.	Inconclusive (See Finding 6)
An MSHA Contracting Officer was forced to retire because the employee would not take a directed reassignment. The reassignment was related to the employee questioning the award of an IT contract.	Inconclusive (See Finding 6)
MSHA management retaliated against a former Contracting Officer by canceling a job announcement after the individual applied for and was offered a position with MSHA.	Inconclusive (See Finding 6)

With respect to the allegations that were substantiated and additional information discovered as a result of our audit, we have findings in the following areas:

1. MSHA did not always ensure the Government received best value or that vendors were treated fairly in the award of contracts.
2. MSHA circumvented requirements to procure office furniture and travel management services from required sources.
3. A potential conflict of interest existed in the award of contracts to a company owned by a Contracting Officer's spouse.
4. Excessive unauthorized commitments and ratifications were made.
5. Deficiencies existed in how MSHA administered some of its contracts.
6. We could not conclude whether actions taken against two Contracting Officers were retaliatory, as alleged.

The overall cause for the problems we identified was a long-term MSHA-wide history of career and non-career management that accepted and fostered a lack of commitment to procurement laws and principles, which was facilitated by a lack of segregation of the procurement function from the program. This lack of segregation allowed program staff to exert undue influence over the procurement process. Additional causes included Contracting Officers' and program officials' lack of knowledge about procurement requirements, the use of sole source procurement as a first – rather than last – resort, and a lack of acquisition planning that resulted in procurement officials having inadequate time to properly complete procurement actions.

## **CONCLUSION**

MSHA did not adhere to the principle of full and open competition embodied in the Federal Acquisition Regulation (FAR). The OIG believes that this guiding principle of full and open competition serves – more than technical compliance with the letter of the FAR – as the standard against which the effectiveness of procurement actions should be judged. It is not reasonable to believe that Congress intended streamlining of Federal procurement to replace responsible actions on the part of agency Contracting Officers or agency management to protect the Government's best interests. We found MSHA repeatedly demonstrated a lack of regard for FAR principles and fostered an environment that allowed, or at the very least, gave the appearance of allowing contract awards based on favoritism or convenience.

The lack of segregation of the procurement function from the program function allowed program officials to exert undue influence over procurement personnel. This was evidenced by Contracting Officers who, although responsible for ensuring the agency followed procurement laws and regulations, were not always allowed to do their jobs, but rather were expected to implement decisions made by others and did so.

This lack of adhering to the spirit as well as the letter of procurement law, leaves MSHA vulnerable to protest from vendors who were not given the opportunity to compete for MSHA's contracts, or required sources that were not used in all cases.

The OIG recently reviewed contract files for procurements made by MSHA in FYs 2003 and 2004. We observed a degree of file documentation that, had MSHA documented its procurement actions and rationale for its choices of procurement instruments to the same extent during the period included in our audit, would have addressed some of the findings in this report. However, there remains a lack of segregation between the procurement function and the program, which continues the risk that procurement failures noted in this report could occur in the future.

## **RECOMMENDATION**

We recommend that the Deputy Secretary of Labor direct the DOL Procurement Executive to rescind MSHA's procurement authority, reassign such authority, and ensure that it is completely independent of MSHA.

## **AGENCY RESPONSE**

The Deputy Secretary responded that it will be important to assess the full breadth and effectiveness of procurement reforms initiated subsequent to the audit period covered by our report, in order to make an informed judgment on the audit report's recommendation.

## **OIG's CONCLUSION**

As we previously stated in our report, while the degree of compliance with procurement laws and principles may improve, unless a change is made to the current structure there remains a lack of segregation between the procurement function and the program, continuing this inherent risk that procurement failures could occur in the future. As we also noted, the granting of such separate procurement authority in the Department is limited — MSHA is one of only two agencies with this authority. Therefore, the Department should look carefully at the *bona fide* need to grant such authority in light of the inherent risk. Our recommendation remains unresolved.





## **Assistant Inspector General's Report**

The Honorable Steven J. Law  
Deputy Secretary of Labor  
U.S Department of Labor  
200 Constitution Ave., N.W.  
Washington, D.C. 20210

Since May 2001, the Office of Inspector General (OIG) has done extensive reviews of selected operations of the Mine Safety and Health Administration (MSHA). This audit report presents the results of the second review the OIG completed based on allegations of wrongdoing in MSHA.

Our first review was a criminal investigation into 16 allegations related to MSHA's investigation of the October 2000 Martin County Coal Co. slurry spill, including allegations of retaliation by an employee of MSHA. In January 2003, we reported on the results of our investigation in which we concluded that none of the allegations could be corroborated.

Beginning in the spring of 2002, the OIG received a series of allegations regarding MSHA procurement and contracting procedures, Government travel card usage, computer security, and personnel issues.<sup>1</sup> This report presents the results of our audit into allegations we received and considered during the period May 2002 to May 2003. See Appendix C for a summary listing of the allegations. The objective of the audit was to determine the merits of the allegations and, for those that were substantiated, recommend appropriate corrective action. Our audit period was June 1, 2000 through December 31, 2002. In addition, we tested some contracts with FYs 2003 and 2004 activity to obtain an understanding of how MSHA's contract files were currently being handled.

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<sup>1</sup> See Appendix B for a detailed explanation of audit objectives, scope, methodology, sampling, and criteria.

***MSHA Procurements Showed a Pattern of Disregard  
for Federal and DOL Acquisition Rules and Requirements***

**AUDIT RESULTS**

The following table presents each allegation we considered and our conclusion on whether the allegation was substantiated.

ALLEGATION	AUDIT CONCLUSION
An MSHA executive directed the award of contracts to friends.	Not Substantiated
The hiring of a Deputy Assistant Secretary created a conflict of interest.	Not Substantiated
A Deputy Assistant Secretary benefited financially from the contract awarded to Ben W. Sheppard & Associates.	Not Substantiated
Training provided by Ben W. Sheppard & Associates could have been obtained free of charge from MSHA or other educational institutions.	Not Substantiated
MSHA forced a Contracting Officer in headquarters to retire because the agency did not want him talking about contracting misdeeds.	Not Substantiated
Illegal software was loaded on MSHA computers and payments were made to MSHA personnel in connection with the improper actions and covered up by management personnel.	Not Substantiated
The Office of the Assistant Secretary for Administration and Management (OASAM) tried to hire an MSHA employee while the employee was on administrative leave for misuse of a purchase card and/or the employee was detailed to OASAM with unlimited warrant authority while on administrative leave.	Not Substantiated
Performance Associates International (PAI) was not uniquely qualified to evaluate training programs; therefore, the sole source award was not properly justified.	Substantiated (See Finding 1)
MSHA management did not intend to open the contract being performed by PAI to competition as required by procurement law.	Substantiated (See Finding 1)
Ben W. Sheppard & Associates was not uniquely qualified to provide training; therefore, the sole source award was not properly justified.	Substantiated (See Finding 1)
MSHA program officials verbally ordered computers for the Arlington office move before a procurement action had been taken, and the lowest bidder was not used.	Substantiated (See Finding 1)
High dollar procurements were placed without competition, or consolidation, by using small purchase vehicles and increasing the procurement by millions of dollars over time.	Substantiated (See Finding 1)
An MSHA Contracting Officer was directed by MSHA supervisory personnel to process two purchase orders to cover unauthorized commitments totaling over \$600,000.	Substantiated (See Finding 1)
MSHA was planning to purchase system furniture from other than a required source.	Substantiated (See Finding 2)
MSHA management approved illegal procurement of furniture for the Denver office without consideration of the cost or regulations.	Substantiated (See Finding 2)
An MSHA employee contracted with a business owned by a spouse.	Substantiated (See Finding 3)
MSHA used unauthorized commitments as an accepted practice.	Substantiated (See Finding 4)
An MSHA employee was transferred to OASAM for not assisting in covering up improper procurement actions and was terminated illegally by MSHA for misuse of a Government travel card.	Inconclusive (See Finding 6)
An MSHA Contracting Officer was forced to retire because the employee would not take a directed reassignment. The reassignment was related to the employee's questioning the award of an IT contract.	Inconclusive (See Finding 6)
MSHA management retaliated against a former Contracting Officer by canceling a job announcement after the individual applied for and was offered a position with MSHA.	Inconclusive (See Finding 6)

***MSHA Procurements Showed a Pattern of Disregard  
for Federal and DOL Acquisition Rules and Requirements***

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With respect to the allegations that were substantiated and additional information discovered as a result of our audit, we have findings in the following areas:

1. MSHA did not always ensure the Government received best value or that vendors were treated fairly in the award of contracts.
2. MSHA circumvented requirements to procure office furniture and travel management services from required sources.
3. A potential conflict of interest existed in the award of contracts to a company owned by a Contracting Officer's spouse.
4. Excessive unauthorized commitments and ratifications were made.
5. Deficiencies existed in how MSHA administered some of its contracts.
6. We could not conclude whether actions taken against two Contracting Officers were retaliatory, as alleged.

The details of our audit are presented below with respect to allegations as defined on page 68 of this report. We have presented those allegations that have not been substantiated, and findings related to the allegations that could be substantiated, and findings related to other information developed during our audit.

## **Allegations Not Substantiated**

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**The OIG Found No Evidence to Support Seven Allegations**

The OIG found that seven allegations were not substantiated, as discussed below. In some cases, the subjects of the unsubstantiated allegations also played a role in findings related to allegations we did substantiate. Where this is the case, we have provided a reference to the pages where the related findings are discussed.

**1. The OIG found no evidence to support allegations that an MSHA executive improperly directed the award of contracts to friends.**

The OIG received an allegation that a top MSHA official improperly gave contracts to their friends and/or business associates. While we confirmed that the companies that were the subject of the allegation did receive contracts from MSHA, we found no evidence that a top MSHA executive improperly influenced the contract decisions. *However, other issues related to these contracts are discussed on pages 27 and 31 of this report.*

**2. The OIG found no support for allegations that the hiring of a Deputy Assistant Secretary created a conflict of interest.**

The OIG received allegations that MSHA had created a possible conflict of interest by hiring a Deputy Assistant Secretary who had been the Chief Executive Officer of, and was still associated with, the International Society of Mine Safety Professionals, an organization currently receiving payments from a training contract MSHA had with Ben W. Sheppard & Associates. It was also alleged that the Deputy Assistant Secretary was associated with personnel from Performance Associates International, a company also under contract with MSHA. While our audit found that the Deputy Assistant Secretary was the Chief Executive Officer of the organization before he came to MSHA and was on the Board of Directors after accepting a position with MSHA, he resigned his position on the Board soon after accepting the appointment with MSHA in order to ensure there would be no conflict of interest or an appearance of a conflict of interest. Based on information obtained through various interviews, we concluded there were no business or personal connections between the Deputy Assistant Secretary and Performance Associates International that would create a conflict of interest. *However, we identified issues related to improper procurements of the Performance Associates International and Ben W. Sheppard & Associates contracts, as discussed on pages 27 and 31, respectively, of this report.*

**3. The OIG found no evidence to support allegations that a Deputy Assistant Secretary benefited financially from a contract awarded to Ben W. Sheppard & Associates.**

The OIG received allegations that a Deputy Assistant Secretary benefited financially from a contract awarded to Ben W. Sheppard & Associates. We did not find any evidence that the Deputy Assistant Secretary benefited financially from the fact that Ben W. Sheppard was being used to provide training to MSHA personnel. *However, other issues related to this procurement are discussed on page 31 of this report.*

**4. The OIG found no evidence to support allegations that training provided by Ben W. Sheppard & Associates could have been obtained free of charge from MSHA.**

The OIG received an allegation that the training provided by Ben W. Sheppard & Associates could have been obtained free of charge. Based on information obtained during our audit, we found that the training was a 5-day course directed toward passing an examination for certification as a Mine Safety Professional. Regardless of whether the MSHA Academy could have provided the same or similar course as that offered by Ben W. Sheppard & Associates, training offered by the Academy is not free. In addition, the costs of the training course offered by Ben W. Sheppard & Associates included the cost of the International Society of Mine Safety Professional's certification examination; we did not find evidence that the Academy provided this examination free of charge.

We did not include procedures to determine if other educational institutions might have offered the same training at no cost. However, even if similar training had been available free of charge from outside providers, we believe MSHA's acceptance of such training would have raised an issue of improper augmentation of MSHA's appropriation. *In a related matter, we found improper procurement actions regarding Ben W. Sheppard & Associates, as noted on page 31 of this report.*

**5. The OIG found no evidence to support allegations that a Contracting Officer in headquarters was forced to retire by MSHA.**

The OIG received an allegation that a Contracting Officer located at MSHA's headquarters in Arlington, Virginia, was forced to retire because agency officials feared the Contracting Officer would talk about contracting misdeeds. We interviewed the Contracting Officer in question and the employee stated that his retirement was primarily due to health concerns.

**6. The OIG found no evidence to support allegations that illegal software was loaded on MSHA computers and payments were made to MSHA personnel in connection with the improper actions and covered up by management personnel.**

The OIG received allegations that MSHA had installed unauthorized software on computers in the Human Resources Division (HRD) in MSHA's headquarters in Arlington, Virginia. The allegations included statements that MSHA (1) paid the husband of an HRD employee to install the unauthorized software and certain MSHA employees who had knowledge of the illegal software; and (2) covered up those payments. To test for the presence of unauthorized software, OIG auditors used a specialized computer application to scan all workstations (20) located in MSHA's HRD in Arlington, Virginia. Upon completion of the scanning process, analyses were performed to identify unauthorized software products. We found no unauthorized software present on the computers tested. In addition, based on information obtained through interviews with MSHA personnel, we found that the allegation did not relate to new software, but rather to a database developed by MSHA staff using Microsoft Access, which was already available on MSHA's computer system.

The allegations we received also contained statements that payments were made to the husband of the HRD employee who allegedly installed the software and MSHA employees who knew about the illegal software. To determine the validity of this allegation, we queried DOLAR\$ to identify any payments made to the employee's husband or MSHA employees other than payments properly due the employees. No such payments were identified.

**7. The OIG found no evidence that OASAM tried to hire an MSHA employee while the employee was on administrative leave for misuse of the employee's purchase card, or that the employee was detailed to OASAM and given unlimited warrant authority to purchase services while on administrative leave from MSHA with unresolved questions regarding the employee's integrity.**

The OIG received allegations that OASAM management tried to hire an MSHA employee who was on administrative leave for misuse of a purchase card, and that the employee was detailed to OASAM with unlimited warrant authority while on administrative leave with unresolved questions regarding the employee's integrity. Based on our audit, we found that the employee had been approached by OASAM personnel about a position with OASAM several months before coming to OASAM on detail. We also found that the employee was not on administrative leave before beginning a detail with OASAM. Based on information obtained during our audit, we found no personnel file documentation that shows that the employee was on administrative leave for any purpose. We did, however, find that the employee was away from work for 3 days after being informed of travel card violations, but then returned to the detail with OASAM. The employee was on detail to OASAM for

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several months before accepting a position with the Department of Navy in the procurement area. We did not find evidence that there was an issue with the employee related to a purchase card. *However, as noted in finding No. 6 on page 49 of this report, there was an issue raised by MSHA management involving the employee's travel card.*

# **Findings Based on Substantiated Allegations and Additional Information Found During Our Audit**

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The allegations (see Appendix C) substantiated by our audit and additional conditions found during our audit involving MSHA’s contracting actions and personnel issues are presented below:

**Finding 1 - MSHA Did Not Ensure the Government Received Best Value or That Vendors Were Treated Fairly in the Award of Contracts (Allegations 9, 10, 11, 12, 13, 16, 17, & 19)**

Our audit of the procurement-related allegations found that MSHA did not ensure the Government received fair and reasonable prices, conflicts of interest and favoritism existed in appearance, if not in fact, and the Government could have been exposed to protest by and liabilities to other sources that were not given a fair opportunity to compete for such awards. The conditions found in this finding involved MSHA’s failure to follow procurement laws and regulations in

contracting under the Federal Acquisition Regulations, including Federal Supply Schedule, Simplified Acquisition, sole source procedures, and SBA’s 8(a) program.

In response to allegations that MSHA improperly contracted with selected vendors, we reviewed contracts MSHA awarded to the following:

a.	Envision Technology Partners (IT services)	\$10,781,173.80
b.	T/Clark and Associates (Computer equipment)	\$ 3,613,146.96
c.	Advanced Resource Technologies, Inc. (IT services)	\$ 2,106,887.23
d.	GovConnection (IT equipment and services)	\$ 682,670.64
e.	Performance Associates, Inc. (Advisory and assistance services)	\$ 345,586.00
f.	Other Sole Source Awards (Training and other services)	\$ <u>237,731.00</u>
	<b>TOTAL</b>	<b><u>\$17,767,195.63</u></b>



**Finding 1a:  
Envision Technology  
Partners, Inc. (\$10.8  
million)**

During the period October 27, 2000 through September 30, 2002, MSHA entered into 19 contracts and contract modifications totaling \$10.8 million to obtain information technology and related services from Envision, an 8(a) contractor that is on the GSA schedule. See Exhibit A for a detailed listing of these contracts.

Based on responses to OIG inquiries, MSHA management stated that Envision's contracts were based on the use of a Federal Supply Schedule contract and, therefore, met the FAR requirement for full and open competition. They further noted that all orders with Envision were awarded using the Simplified Acquisition procedures under FAR Part 13. In addition, we were told that Envision is a small 8(a) certified business that is eligible for small business set-aside awards under the Federal Supply Schedule and Small Business Administration award programs. They explained that, while not stated specifically on the contracting documents, use of Envision as a contractor was for the purpose of setting aside a class of acquisitions to an 8(a) certified contractor in accordance with FAR Part 19.

Using documentation supplied by MSHA, we found that of the 19 contract files examined, 8 included Standard Form (SF) 279, Individual Contract Action Report, which provided evidence of the contract action intended to be taken by MSHA on those contracts. Each of the eight forms noted that Envision was classified as a Small Disadvantaged Business. However, on only one of the forms was a contract noted as 8(a) under the portion of the form that identifies the Small Disadvantaged Business Program used for the procurement. In that same category, MSHA noted one contract as a Small Disadvantaged Business Set Aside. In the category, Other Preference Programs, MSHA included two contracts as Small Business Set Asides. Of the eight contract files that include an SF 279, we found four that indicated the Contracting Officer used the Federal Supply Schedule and another four that indicated the procurement used the Simplified Acquisition Procedures. The remaining 11 contracts did not have sufficient information in the contract file to make a decision as to what method MSHA initially planned to use for the procurement.

Although MSHA management stated that orders placed with Envision were awarded using the Simplified Acquisition Procedures under FAR Part 13, they were not able to provide evidence that Contracting Officers followed the requirement of FAR Part 13 section 13.003 (h) (1), "In addition to other considerations, contracting officers shall – promote competition to the maximum extent practicable."

**MSHA Claims the Use of Federal Supply Schedule Contracting**

Information provided by management, that the Envision orders were placed using the Federal Supply Schedule based on Envision's having a Federal Supply Schedule number and that number being included on the purchase order or invoices submitted by the company, did not provide support for the actions taken by MSHA Contracting Officers. As noted above, in the contracting files that included documentation

identifying the type of procurement used for a specific contract, we found MSHA indicated on four of eight contracts that the Contracting Officer used the Federal Supply Schedule provisions to make the purchase.

In those cases where MSHA did plan to procure services using Federal Supply Schedule procedures, the FAR included specific requirements that should have been followed by the Contracting Officer. FAR 8.404 (b)(2) includes procedures for orders exceeding the micro-purchase threshold (orders for more than \$2,500) but not exceeding the maximum order threshold (the maximum order threshold is defined in each schedule contract). This part provides instructions for Contracting Officers to place orders with the schedule contractor that can provide the supply or service that represents the best value. However, before placing an order, the Contracting Officer should consider reasonably available information about the supply or service offered under multiple award schedule contracts by using the GSA Advantage! on-line shopping service, or by reviewing the catalogs or pricelists of at least three schedule contractors.

Based on the results of our audit, we found that the contract files did not have sufficient information to show how the Contracting Officer followed the FAR requirements for the 4 specific procurement actions noted above or for 13 of the other 15 Envision contracts included in our audit.

#### **Required Procedures for Statement of Work Documentation**

In another documentation issue, we found that the Contracting Officer decided that a statement of work was needed for 13 of the contracts included in our audit. This indicates that the services were of such a nature that a statement of work was needed. However, MSHA did not provide statements of work for three contracts requiring similar services related to training, analyst, and programming support for the common platform project totaling \$3,635,407.

For those contracts determined by MSHA to require a statement of work, there was no evidence in the files or otherwise provided by MSHA during our audit to show how they had followed the FAR requirements for orders issued using the Federal Supply Schedule contractors. For orders issued that required a statement of work, MSHA contracting officials should have issued a request for quotes to at least three schedule contractors. The Contracting Officer should have included the statement of work in the request for quotes, evaluated responses, and then made a best value selection. None of the contract files included evidence that this was done.

#### **MSHA Claims Contracts Awarded Using SBA's 8(a) Procedures**

As noted in the discussion above, our audit disclosed that one contract was designated as procured under the SBA's 8(a) program. FAR 19.8 outlines procedures for procuring services/supplies from SBA. When using the 8(a) program, FAR 19.801-1 states that an agency should evaluate its current and future plans to acquire the work that 8(a) contractors are seeking to provide, problems encountered in previous acquisitions of the work from the 8(a) contractors or other contractors,

whether the work has been previously acquired using small business set-asides, and any other pertinent information about known 8(a) contractors, the items, or the work. When necessary, the contracting agency shall make an independent review of the factors in 19.803(a) and other aspects of the firm's capabilities that would ensure the satisfactory performance of the requirement being considered for commitment to the 8(a) program. Contract files we reviewed did not provide sufficient evidence that MSHA had performed the procedures set forth in FAR 19.8, including how it had, in fact, contracted with SBA for the services or how it ensured SBA approved a sole source award in accordance with FAR 19.808.1.

### **MSHA's Contracting Officer Provided File Documentation Instructions**

While FAR 13.106-3(b) is clear in its intent to allow contract documentation to be limited to a minimum, a basic principle of sufficiency is not evident in MSHA contract files included in our audit. Management, auditors, or other authorized interested parties need to ensure laws and regulations are being followed in contracting. Therefore, it is not reasonable to interpret the FAR as implying that evidence of actions taken should not be maintained. MSHA's Supervisory Contract Specialist indicated this understanding in e-mails sent to the employees of the Acquisition Branch in November 2001 and February 2002. The instructions from the November e-mail stated that the FAR requires that files be documented for Simplified Acquisitions and that competitions should be documented with at least a memo to the file. In addition, the February e-mail informed staff that FAR Part 13 requires that MSHA document contract files.

We believe the cause of the failure of MSHA's contracting staff to comply with applicable laws and regulations in contracts with Envision was a long-term culture and procurement environment that had been established in MSHA. Contracting Officers, although responsible for ensuring the agency followed procurement laws and regulations, were not always provided the information needed on a timely basis to make decisions that would ensure compliance. Based on correspondence received during the audit, the Contracting Officer responsible for awarding the Envision contract informed management on November 13, 2000, that statements of work were not available in time to ensure the award could be contracted on a competitive basis. The correspondence further noted that the Contracting Officer told management that there were other companies on the GSA schedules that could provide the services needed by MSHA. This information suggests the Contracting Officer was not making contracting decisions for this procurement. Procurement decisions were being made by officials other than those with the authority and background to understand and apply procurement laws and regulations.

### **Conclusion**

We believe that only 2 of the 19 contracts (see table 2 in finding 5) we reviewed included information needed in order to ensure contracts were awarded in accordance with laws and regulations. The other 18 contracts lacked sufficient evidence to show how MSHA's Contracting Officers followed contracting law and regulations required for Federal Supply Schedule, Simplified Acquisition or 8(a)

program acquisitions. In addition, while our audit was not designed to determine whether MSHA got the best value for the funds spent, we believe this failure to follow procurement laws and regulations put MSHA's management in a position of not being able to ensure the best value for the Government was obtained.

**Finding 1b:  
T/Clark and  
Associates (\$3.6  
million)**

T/Clark and Associates (T/Clark) was primarily engaged in serving the IT community in the Federal Government. T/Clark had marketing (reseller) agreements with many computer equipment manufacturers, including Apple, Dell, Gateway, Hewlett-Packard, Epson, MicronPC and Toshiba.

In FY 2000, MSHA began an initiative to replace existing desktop computers throughout the agency. MSHA developed and distributed an approved desktop configuration with a list of allowable accessories.

Under this initiative, MSHA purchased \$3.6 million of computer equipment during the period July 2000 through September 2002 by issuing 101 purchase order contracts exclusively to T/Clark. See Exhibit B for a detailed listing of these contracts. During our audit, MSHA provided no evidence indicating it had considered any other sources of supply or made any effort to determine that it was obtaining the best value for the agency.

MSHA officials provided three explanations for the agency's repeated purchases from T/Clark:

1. T/Clark and Micron had a teaming arrangement and MSHA placed orders in compliance with the requirements related to Federal Supply Schedule contracting.
2. MSHA had a blanket purchase agreement with T/Clark and, therefore, was not required to consider other sources of supply.
3. T/Clark was a small, woman-owned business located in a HubZone and MSHA placed orders with T/Clark as a small business set-aside.

Based on the information presented below, we believe there is no evidence to support MSHA management's explanations noted above related to contracts with T/Clark.

**1. T/Clark and Micron had a teaming arrangement and MSHA placed orders in compliance with the requirements related to Federal Supply Schedule contracting.**

T/Clark had an agreement with Micron allowing the company to resell Micron products; however, this agreement did not constitute a teaming arrangement under Federal procurement policy.

GSA defines a Federal Supply Schedule Contractor Team Arrangement as an arrangement between two or more GSA Schedule contractors to work together to meet agency requirements. A contractor team arrangement permits contractors to complement each other's capabilities to compete for orders for which they may not independently qualify.

GSA further states that the contractor team arrangement should designate all team members, their corresponding GSA Schedule contract numbers, and describe the tasks to be performed by each team member, along with the associated proposed prices.

T/Clark did not have a GSA Schedule contract; therefore, any arrangement between T/Clark and Micron would not have qualified as a legitimate teaming arrangement. MSHA officials were aware that T/Clark was not on the GSA Schedule, as evidenced by the letter dated May 23, 2000, from the MSHA Contracting Officer to T/Clark that authorized T/Clark to use the blanket purchase agreement (BPA) between Micron and MSHA in procuring computer equipment, supplies and services.

Based on information provided by GSA contracting officials in response to our questions on third-party vendors supplying goods and services to DOL, we found that if an award is made to other than a GSA Schedule contractor, the purchase cannot be awarded under FAR Part 8. Further, the items purchased should be purchased in accordance with regulations for open market vendors (i.e., all purchases over \$2,500 must be competed, sole source contracts must be justified, etc.).

The MSHA Contracting Officer cited FAR Part 52.251-1 as the authority for allowing T/Clark to order from the Micron BPA. FAR Part 52.251-1 requires that the following clause be inserted in solicitations and contracts when the Contracting Officer may authorize a contractor to acquire supplies or services from a Government supply source:

The Contracting Officer may issue the Contractor an authorization to use Government supply sources in the performance of this contract. Title to all property acquired by the Contractor under such an authorization shall vest in the Government unless otherwise specified in the contract. Such property shall not be considered to be 'Government-furnished property,' as distinguished from 'Government

property.' The provisions of the clause entitled 'Government Property,' except its paragraphs (a) and (b), shall apply to all property acquired under such authorization.

This clause has no application to the T/Clark – Micron situation. The clause referenced applies to situations where the Government contractor would be purchasing supplies or services to be used in the performance of their contract, such as the operator of a Job Corps center being authorized to purchase office supplies from the Federal Supply Schedule. This clause would not apply to a situation such as this, where T/Clark purchased computer equipment off the Micron Federal Supply Schedule and then resold it to MSHA.

We also found that MSHA did not comply with FAR requirements regarding the use of Federal Supply Schedule contractors.

FAR Subpart 8.404(b)(2) states:

*Orders exceeding the micro-purchase threshold but not exceeding the maximum order threshold. Orders should be placed with the schedule contractor that can provide the supply or service that represents the best value. Before placing an order, ordering offices should consider reasonably available information about the supply of service offered under MAS contracts by using the 'GSA Advantage!' on-line shopping service, or by reviewing the catalogs/pricelists of at least three schedule contractors and select the delivery and other options available under the schedule that meet the agency's needs.*

We found no evidence that MSHA Contracting Officers had considered any readily available information regarding other possible sources of supply for its computer replacement needs. Rather, MSHA repeatedly issued contracts to T/Clark with no assurance that the agency was getting best value.

**2. MSHA had a blanket purchase agreement with T/Clark and, therefore, was not required to consider other sources of supply.**

MSHA stated that the agency placed orders with T/Clark based on a BPA with Micron Government Computer Systems, Inc. (Micron), under Federal Supply Schedule contract number GS-35-F-4317D.

While we agree that MSHA's requirement for replacement computer equipment might best be filled through the use of a BPA, we found no evidence of a properly executed BPA between MSHA and T/Clark or between MSHA and Micron during the period June 2000 through December 2002. (MSHA provided a copy of a BPA with Micron, effective March 7, 2003.)

FAR subpart 8.404(b)(4) addresses BPAs under the Federal Supply Schedule, as follows:

The establishment of Federal Supply Schedule BPAs is permitted (see 13.303-2(c)(3)) when following ordering procedures in this subpart. All schedule contracts contain BPA provisions. Ordering offices may use BPAs to establish accounts with contractors to fill recurring requirements. BPAs should address the frequency of ordering and invoicing, discounts, and delivery locations and times.

FAR Subpart 8.404(b)(5) addresses price reductions as follows:

In addition to the circumstances outlined in paragraph (b)(3) of this section, there may be instances when ordering offices will find it advantageous to request a price reduction. For example, when the ordering office finds a schedule supply or service elsewhere at a lower price or when a BPA is being established to fill recurring requirements, requesting a price reduction could be advantageous. The potential volume of orders under these agreements, regardless of the size of the individual order, may offer the ordering office the opportunity to secure greater discounts.

MSHA was unable to provide a signed BPA with Micron or T/Clark, or documentation related to the frequency of ordering and invoicing, discounts, and delivery locations and times. We also found no evidence that MSHA requested a price reduction based on either its recurring requirements or the potential volume of its orders.

**3. T/Clark was a small, woman-owned business located in a HubZone and MSHA placed orders with T/Clark as a small business set-aside.**

MSHA contracting officials stated that the awards to T/Clark were proper because T/Clark was a small woman-owned business and the awards were made pursuant to a small business set-aside.

As a reseller of Micron computers, T/Clark does not qualify as a small business concern. FAR Subpart 19.102(f) states:

Any concern which submits a bid or offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is deemed to be a small business when it has no more than 500 employees, and—

(1) . . . such nonmanufacturer must furnish in the performance of the contract, the product of a small business manufacturer or producer, which end product must be manufactured or produced in the United States.

Micron, the manufacturer, does not qualify as a small business concern; therefore, as a reseller of Micron products, T/Clark would also fail to qualify as a small business concern. Further, T/Clark was not a qualified HUBZone small business concern during the period June 2000 to December 2002.

Moreover, even if T/Clark had qualified as a small business concern, the use of small business set-aside procedures would have required MSHA to show how it properly included SBA and/or GSA in the contracting process. There was no such information in the T-Clark contract files or provided by MSHA during the audit.

FAR Subpart 19.502-4, Methods of conducting set-asides, states:

- (a) Total small business set-asides may be conducted by using simplified acquisition procedures, sealed bids, or competitive proposals.

We found that at the time of the awards examined in this audit, T/Clark was not registered as a woman-owned or Hub-Zone business.

### **Conclusion**

Contracts awarded to T/Clark did not follow procurement rules related to full and open competition. The use of Federal Supply Schedule contracting procedures was not adequately documented to show how the Contracting Officer considered three vendors' price lists or catalogs before making a contractor selection from the Supply Schedule. The selection of T/Clark using the Federal Supply Schedule contracting procedures was not appropriate because T/Clark was not on the GSA schedule. In addition, T/Clark could not have entered into a teaming agreement with Micron, because only Supply Schedule contractors can participate in a teaming agreement. Although MSHA selected Micron equipment and purchased the equipment from T/Clark as a reseller, it did not show how T/Clark was competitively selected, either among all other resellers of Micron equipment or, if considered a small business, how it competed the award among other similar small businesses. While we did not see any evidence of a conflict of interest with contracts awarded to T/Clark, we do believe the contracts awarded to T/Clark were awarded based on convenience.



**Finding 1c:  
Advanced Resources  
Technologies, Inc.  
(ARTI) (\$2.1 million)**

ARTI is headquartered in Alexandria, Virginia, and provides Information Systems Engineering, IT Security Services, and Network Engineering Services to clients in Government and private industry. ARTI is a small disadvantaged business and is on the GSA Federal Supply Schedule.

During our audit period, MSHA issued 14 contracts and contract modifications totaling \$2.1 million to obtain information technology services and network cabling services from ARTI. See Exhibit C for a detailed listing of the 14 contracts.

In response to OIG inquiries, MSHA management stated that ARTI's contracts were based on the use of a GSA Federal Supply Schedule contract and, therefore, met the FAR requirement for full and open competition. MSHA management further stated that there was no requirement under the FAR when the ARTI orders were placed that Contracting Officers document reviews of three offerors under GSA Federal Supply Schedule contracts. Finally, MSHA management stated that ARTI was a small business and setting aside a class of orders for ARTI was allowable under the FAR for MSHA to meet small business goals established by the Department.

MSHA's Directorate of Program Evaluation and Information Resources (PEIR) is responsible for support and training for all MSHA automated information systems, data communications networks and ADP equipment. According to the Director of PEIR, MSHA first began using ARTI for computer support services in 1997 or 1998. PEIR initially obtained services – LAN administrators and help desk personnel in MSHA's Arlington headquarters offices – from ARTI using the GSA 8(a) FAST multiple award contract vehicle. The GSA 8(a) FAST program is a multiple award, indefinite delivery, indefinite quantity contract vehicle offering a variety of information technology support services from approximately 150 8(a) small disadvantaged business concerns. The PEIR Director stated that MSHA preferred the FAST program because it provided a network of contractors that had already been competed by GSA and, consequently, "the process was fast and it cut out the procurement people." While MSHA may have originally obtained services from ARTI through the GSA FAST program, none of the 14 contracts we reviewed contained any reference to a FAST contract. Further, none of the contract files included in our audit provides evidence of MSHA's discussion with GSA to identify ARTI as a sole source under the FAST program or shows how MSHA paid the 1 percent administrative fee that would have been due to GSA for use of that contracting vehicle. Orders issued during our audit period either made no reference to a Federal Supply Schedule contract or referenced Federal Supply Schedule Contract No. GS-35F-5394H under GSA Schedule 70. Schedule 70 provides Federal agencies with information technology and telecommunications hardware, software, and professional services.

FAR Subpart 6.102(d)(3) states that the use of multiple award schedules (MAS) issued under the procedures established by the Administrator of the General Services Administration consistent with the requirement of 41 U.S.C. 259(b)(3)(A) for the MAS program of the GSA is a competitive procedure.

Procedures for using a multiple award schedule are contained in FAR Subpart 8.404(b)(2). This FAR regulation has been in effect since 1995; therefore, it would have been effective during the time of the ARTI contracts included in our audit scope. FAR Subpart 8.404(b)(2) requires the ordering office to place orders with the GSA Schedule contractor that can provide the supply or service that represents the best value. Before placing an order, MSHA should have considered reasonably available information about the supply or service offered under multiple award schedule (MAS) contracts by using the GSA Advantage! on-line shopping service, or by reviewing the catalogs or pricelists of at least three schedule contractors.

We found no evidence that MSHA had made any attempts to determine the agency was receiving the best value when placing orders with ARTI. For example, Purchase Order No. B2717529 was issued to procure the services of one Senior Information Security Engineer full-time and one Senior Information Security Auditor full-time to support the development, implementation and maintenance of MSHA's IT security program. As evidenced by the following e-mail dated December 7, 2000, from the Contracting Officer, MSHA made no effort to determine if the agency was obtaining the best value with this contract action:

I found out through ARTI that a contractor [*senior IT security specialist*] is being hired to begin work Jan 2 through end of fiscal. . . . Arrangements have already been made, a person has been chosen and I have yet to see a requisition or sow [*statement of work*] submitted by MSHA. However, ARTI offered to fax a copy of the sow to me.

Once again, I would appreciate it if you would speak with [*Director - PEIR*] about this. These requirements should be competed and should not be given to procurement after the fact.

MSHA also issued three purchase orders to ARTI related to network cabling services at the MSHA Academy in Beckley, West Virginia. In this case, MSHA's use of the Federal Supply Schedule contract vehicle with ARTI resulted in a lack of competition for the cabling services awards. ARTI subcontracted the work to Phillips Computer Service, a computer company located in Beckley, and charged a 4 percent administrative fee.

The cabling contract is another example of a procurement handled in a hurried fashion. An e-mail from the Contracting Officer dated June 28, 2001, states:

I know this wiring thing is urgent. How do you want me to handle this?

Ps – I left voice mail for [Name Deleted] at ARTI asking if they had GSA vehicle we could tap into for the wiring, but haven't heard back yet.

The MSHA Program Office replied:

If the ARTI fellow doesn't call you back, let [names deleted] know. They will help facilitate his contact with you.

At 11:08 am on June 29, 2001, the Contracting Officer received a reply from ARTI stating:

Our GSA contract number continues to be: GS-35F-5349H.

I would write this up as follows:

Cabling effort at Academy, to include cables and other direct cost	80,000.00
Admin fees 4% (including GSA user caf)	<u>3,200.00</u>
Total	83,200.00

At 2:54 pm the same day (June 29, 2001), the Program Office sent the following e-mail to the Contracting Officer:

Could you please let me know if you were able to award the subject contract? Also, when did you schedule the contractor to begin work? [Name deleted] is working on the materials orders (3 each), but tells me that the vendors that are sending quotes do not guarantee delivery on Monday.

The lack of adequate planning time led MSHA to use the Federal Supply Schedule contract with ARTI that resulted in the Contracting Officer not being able to competitively bid the cabling contracts. By not competing the awards, MSHA has no assurance that it obtained the best value.

We believe the cause of the failure of MSHA's contracting official to comply with applicable procurement laws and regulations in contracting with ARTI was an established culture and procurement environment in place at MSHA. Contracting Officers, although responsible for ensuring the agency followed procurement laws and regulations, were not always given the information needed on a timely basis to make decisions that would ensure compliance. Based on correspondence received during the audit, the Contracting Officer responsible for ARTI contract decisions told management that she had been informed by ARTI that a new contract was being

issued and arrangements had already been made for contractor personnel to begin work, yet the Contracting Officer had not been provided a requisition or a statement of work. The Contracting Officer indicated that these requirements needed to be competed and should not be given to the Contracting Officer “after the fact.” This type of statement by the Contracting Officer – who should have the ability to make an informed decision on such significant contracts – shows an environment in which contracting decisions were being made by officials other than those with the authority and background to understand and apply procurement laws and regulations.

While our audit was not designed to determine the potential waste of Federal resources because of MSHA’s actions, we believe this failure to follow procurement laws and regulations put MSHA’s management in a position of not being able to ensure the best value for the Government was obtained.

**Conclusion**

MSHA’s contracting with ARTI is an example of how an environment of using Contracting Officers to merely sign off on procurement actions -- rather than having Contracting Officers actively involved in executing contract actions – resulted in improper procurements. From the information provided during the audit, we could not determine whether MSHA intended to use the Federal Supply Schedule procedures, the GSA 8(a) FAST program, or sole source rules.

**FINDING 1d:  
GovConnection  
(\$682,671)**

We received allegations that MSHA officials did not follow FAR guidance in the purchase of LAN equipment in conjunction with the relocation of its office within Arlington, Virginia. During early 2002, MSHA relocated its headquarters in Arlington, Virginia. As part of this relocation, expenditures were authorized for IT equipment, the building of the computer room and the

running of network cabling.

In November 2001, MSHA IT officials advised GovConnection of MSHA’s upcoming move in March 2002, and requested a quote for some computer equipment that would be needed at the time of the move. MSHA IT officials worked with GovConnection during the period November 2001 to February 2002 to get pricing information and fine-tune the order. In February 2002, GovConnection provided its final quote to MSHA IT officials for the computer equipment.

On February 26, 2002, almost 4 months after beginning informal negotiations with GovConnection, MSHA IT officials submitted two requisitions to the MSHA IT procurement office in Denver, Colorado. On that day, the Contracting Officer was told by management in the procurement division in Arlington that it was critical to purchase the equipment **immediately**. On February 27, 2002, an e-mail was sent to the Contracting Officer directing the official to process the two requisitions. The requisitions were described as equipment needed for the Arlington move and stated:

These requisitions have the highest priority and need purchase orders issued today (Wed 2/27) to GovConnection.

Rather than processing the orders as directed, the Contracting Officer obtained quotes from a second equipment supplier, by providing the second supplier equipment specification lists developed by MSHA IT officials and prices provided to MSHA by GovConnection. The Contract Officer violated FAR Part 15.306 concerning communication with offerors, by providing prices of one contractor to another contractor. The second contractor provided quotes for the equipment that were \$17,663 less than those of GovConnection. Two purchase orders were issued to the second supplier. After communications between MSHA management and the Contracting Officer over a period of several days, the Contracting Officer canceled the two contracts previously issued to the second supplier.

On March 5, 2002, under direction from an MSHA official in Arlington, the Contracting Officer issued two contracts to GovConnection, one contract for \$364,081 to install Compaq Network Server Equipment and a second contract for \$318,589 to install Cisco Communication Equipment. The total for the two contracts was \$682,670.

On both contract documents obtained by the auditors, the Contracting Officer had placed the following notation:

Orders were placed under direction of [*Chief, Management Services Division*]. No competition or price reasonableness. [*Chief, Management Services Division*] was informed of FAR requirements. This equipment was already on order and in production prior to order being placed. Order to proceed was not given by procurement official.

Based on information available in the procurement files, interviews, and reviews of laws and regulations, our audit disclosed that MSHA management did not follow requirements for the use of Government Wide Acquisition Contracts (GWAC), specifically, ECS II and SEWP III procurement rules.

Based on information on the face of the requisition and Purchase Order No. B2527551 for \$318,589.35 was intended to be issued pursuant to ECS II rules. MSHA did not follow the requirements for placing orders using ECS II rules as noted below:

1. There was no documentation to show how MSHA's Contracting Officer ensured the following "Fair Opportunity To Be Considered" requirements were met.
  - Compare the various products and services offered on at least (3) contractors' electronic catalogs and document the comparison in the official Delivery Order file.

- The process used and the rationale for selection of the contractor shall be documented in the Delivery Order file.
2. There was no documentation to show how MSHA's Contracting Officer ensured the following procedures to contact an ECS II contractor by one of the following methods were carried out:
    - Request for Quotes (RFQ) process – obtain (3) quotes through NITAAC's online RFQ System
    - Direct Order Authorization (DOA) process –
      - Review (3) contractors' electronic catalogs or call (3) ECS II contractors to obtain quotes via fax.
      - Obtain appropriate documentation and submit the documentation to the appropriate Contracting Officer.
      - Contracting Officer faxes the order to the winning contractor noting it as a NIH ECS II contract and including the contractor number and NIH authorization number.
      - Include a written best value analysis in the official file.

Based on information on the face of the requisition and Purchase Order No. B2727550 for \$364,081.29 was intended to be issued pursuant to SEWP III rules. MSHA did not follow the requirements for placing orders using SEWP III guidelines. The contract files did not contain documentation that:

1. MSHA's Contracting Officer followed the requirements to authorize GovConnection to purchase from a SEWP contract. For example, MSHA provided no documentation that the Contracting Officer had prepared and signed a statement authorizing the contractor to purchase from SEWP contracts;
2. proved how MSHA routed the Delivery Order to the NASA SEWP BOWL to ensure a NASA SEWP tracking number was provided to the contractor;
3. MSHA performed the appropriate market research as required in FAR Part 10;
4. explained how MSHA performed either a class specific search, an RFQ to all contract holders in that class, or another equivalent method for providing fair opportunity; or
5. explained the Contracting Officer's rationale for placing the order with the chosen contractor.

As noted above, MSHA's IT officials did not provide the Contracting Officer with information on the procurement until the day before the procurement needed to be completed. As a result, the Contracting Officer did not have the time necessary to properly procure the IT equipment. MSHA's procurement environment allowed decisions about procurement to be placed with individuals who specialized in system and equipment specifications and design rather than with trained and warranted contract specialists. This environment contributed to the awarding of contracts to a

favorite or incumbent supplier rather than ensuring that MSHA obtained the best value for the Government.

We also found that MSHA did not adequately maintain contract files for GovConnection or Apparatus Sales in accordance with the requirements of FAR 4.8 or SEWP and ECS rules. Through responses to our statement of facts, management informed us that the files had been transferred from Denver by noncontracting personnel and necessary documents might not have been included in the files. However, our audit found little or no documentation for those contract actions. The lack of contract file documentation did not allow MSHA management the ability to ensure Contracting Officer's followed proper procedures and laws and regulations to ensure the Government received the best value.

In addition, by not providing for proper procurement of these contracts, MSHA might have paid more for the LAN requirements and left the Government open to protest from suppliers who were not given a fair opportunity to compete and potentially additional costs based on those protests.

### **Conclusion**

Excluding the Contracting Officer during procurement planning led to a series of actions in violation of procurement laws and regulations. The actions of all parties involved in this contract decision resulted in violations of not only FAR requirements for competition, but also FAR requirements to protect contractor information from unauthorized disclosure to competitors and contracting under Government Wide Acquisition Contracts' (GWAC) procedures. MSHA did not ensure a best value decision was made for the Government. See finding 6 for additional consequences related to this procurement.

**Finding 1e:  
Performance  
Associates  
International, Inc.  
(\$345,586)**

We received allegations that a sole source award to Performance Associates International, Inc. (PAI) was not justified because they were not uniquely qualified for the work required. During the period February 2002 to October 2003, MSHA entered into a series of three contracts with Performance Associates International, Inc. (PAI), to evaluate its training programs and make

recommendations to facilitate achieving agency goals and meeting the needs of stakeholders. MSHA did not present, as required, two of the sole source advisory and assistance contracts to the Procurement Review Board before awarding the contracts. In addition, management did not give the Contracting Officer a reasonable time to ensure the procurement process was properly completed for the first contract awarded to PAI.

DLMS 2-800 provides requirements for agencies to follow when purchasing advisory and assistance services. FAR Subpart 2.1 defines "advisory and assistance services" as those services provided under contract by nongovernmental sources to support or improve: organizational policy development; decision-making;

management and administration; program and/or project management and administration; or research and development activities. It also can mean the furnishing of professional advice or assistance rendered to improve the effectiveness of Federal management processes or procedures (including those of an engineering or technical nature).

DLMS 2, Paragraph 812.f states that the PRB is responsible for reviewing the following actions and recommending approval or disapproval to the Assistant Secretary for Administration and Management:

- (1) All proposed acquisitions and assistance actions over the small purchase limitation as defined in the FAR Part 13 that are to be awarded under "other than full and open competition" procedures.
- (2) All major acquisitions, within the Department, defined as:
  - (a) FIP resources with an estimated contract life cycle cost in excess of \$2,500,000, or having significant computer systems architecture technology or compatibility ramifications for the Department.
  - (b) Acquisition instruments having significant impact on the Department.
- (3) All contracted advisory services and modifications of any amount to be awarded under "other than full and open competition" procedures.
- (4) All contracted advisory services over \$50,000 to be awarded under "full and open competition" procedures.
- (5) All modifications to construction contracts over \$200,000 (other than for equitable adjustments pursuant to the "Changes" clause).
- (6) All requests for ratification of unauthorized commitments.

We found MSHA officials had provided an explanation for not originally obtaining prior approval from the PRB for the first contract awarded to PAI. In a revised request to the PRB dated November 22, 2002, MSHA stated, "due to errors in interpreting the applicability of Volume 2 of the Department of Labor Manual Series regarding which contracts require Procurement Review Board (PRB) approval prior to award, this proposal was not submitted to the PRB for review as it should have been." The document stated further that the Contracting Officer who placed the order was told by an OASAM procurement official that since the contract was under \$100,000, PRB approval was not needed.



In addition, based on an e-mail dated March 5, 2002, we found that prior to issuing the first contract to PAI, MSHA management had been in contact with an OASAM official about advisory and assistance requirements. The e-mail noted that because a representative of the Solicitor's Office believed the work MSHA intended to award as a sole source contract was in fact advisory and assistance, the Deputy Director of Administration and Management "went directly to DOL for advance approval." After discussing the requirement with an OASAM procurement official, the "order was placed." Therefore, they did not believe the order was advisory and assistance and did not present the contracts for the required PRB approval prior to issuing Purchase Order No. B2522502.

However, as with other procurements discussed in this report, we found that MSHA management failed to properly use the contracting process to ensure the Contracting Officer who was asked to approve the procurement action was involved in the way intended by law, regulation or policy. Based on information provided in an interview with the Contracting Officer who approved the PAI contract, the auditors found that the Contracting Officer had received an e-mail from a Procurement Policy Analyst with what the Contracting Officer described as "directions to process the purchase order immediately." There was a handwritten notation on the e-mail stating, "2/27/02, Instructions were to process, Performance Assoc. would be starting on March 1, 2002." An attachment to the e-mail included the sole source justification and statement of work to be used for the contract. The contract was awarded on February 28, 2002.

The sole source justification read as follows:

MSHA has an immediate need to accomplish the required research and prepare the requested products within a specified time frame and budget. The requested research requires a contractor that is familiar with the mining industry and mining training in order to permit results to be more immediately produced. The results are required for implementation of a significant portion of the Agency performance plan that in turn will save lives in the mining industry. The contractor must also be able to start this project immediately and must have established contacts and familiarity with the subject matter to allow for minimal travel and training startup costs in order to perform within the established budget limitations. The proposed contractor, Performance Management Associates, Inc. has a wealth of experience in dealing with mine training needs, meets the established criteria and can begin work immediately.

The ratification of Purchase Order No. B2522502 in the amount of \$25,000 was subsequently approved by the PRB based on MSHA's characterization of PAI's unique ability in the area of metal and nonmetal mining training.

Purchase Order No. B2522508, awarded on June 12, 2002, in the amount of \$83,841, required PAI to provide coordination of activities of MSHA project teams formed to implement the recommendations resulting from the first contract with PAI. The contract included a sole source justification and a notation that it was "urgent & compelling."

The sole source justification for this contract reads as follows:

MSHA has an immediate need to accomplish the required research and prepare the requested products within a specific time frame and staying within a limited budget. The requested research requires a contractor that is familiar with the mining industry.

When first presented to the PRB, Purchase Order No. B2522508 in the amount of \$83,840.97 was not approved by the PRB because they were not convinced that the statement of work indicated the contract was in fact advisory and assistance services. The Department of Labor's Office of the Solicitor (SOL) confirmed in January 2003 that this contract was for advisory and assistance services. MSHA resubmitted the award to the PRB on March 4, 2003, but there is no record of PRB approval or action on this second request.

We did not find MSHA's justification for sole source procurement for either purchase order to present a reasonable argument for the sole source awards. Although the justification made general statements that PAI could perform the services required in the time requested, it does not provide any documentation or details to support the claims that the company was the only contractor who could meet the requirements. Thus, MSHA cannot show how it complied with all requirements of FAR 6.302-1 and 6.302-2 for other than competitive procurement due to having only one source or the requirement being an urgent and compelling need. As evidence that MSHA's statements of the unique abilities of PAI were not completely accurate, a PAI representative told us that anyone with experience in mining and evaluating training programs could have performed the initial contract requirement.

Finally, contract no. J8R31007 in the amount of \$236,745, awarded on October 1, 2003, required PAI to provide an evaluation of MSHA training programs for enforcement, engineering, and education, and to provide training. This \$236,745 contract was competitively procured. When the contract was first provided to the PRB for approval as a sole source award, the PRB decided the information presented by MSHA did not "sufficiently justify the sole source contract." MSHA subsequently competitively procured this service that resulted in PAI being awarded the contract.

### **Conclusion**

Although we found MSHA had engaged in discussions with OASAM procurement officials and PRB representatives in connection with the PAI contracts, we believe

that they did not ensure procedures were in place nor that contracting personnel had sufficient understanding of the need for PRB approval on advisory and assistance services or sole source awards. In addition, management did not ensure the sole source justifications prepared by MSHA personnel were sufficient as required by the FAR and did not ensure the requirement was provided to Contracting Officers in a timely manner to ensure proper contracting procedures were followed.

**FINDING 1f:  
Sole Source Awards  
(\$237,731)**

In response to the various allegations received during the period September 2002 to March 2003, we reviewed contracts MSHA had entered into with the following vendors:

1. Ben W. Sheppard & Associates \$201,925
2. E.L. Hampton Trucking \$ 11,122
3. Former MSHA Employee \$ 24,684

All contract actions with the above vendors were performed using sole source procedures. We found that sole source justifications, when prepared, were not adequate to support MSHA's decision not to use competition.

**1. Ben W. Sheppard & Associates**

We received an allegation that the sole source award to Ben W. Sheppard & Associates, Inc., was not justified because they were not uniquely qualified to provide the required services. The Department's general ledger system, as of July 25, 2003, shows that MSHA paid Ben W. Sheppard & Associates 197 payments of \$1,025 each for a 5-day training course titled "Certified Mine Safety Professional (CMSP) Exam Preparation Course." The 197 payments of \$1,025 total \$201,925.

The training course was offered at the MSHA Training Academy in Beckley, West Virginia, on the following dates:

Course Dates	Number of Attendees
January 14 – 18, 2002	14
February 18 – 22, 2002	3
March 25 – 29, 2002	15
April 2 – 5, 2002	16
June 24 – 28, 2002	19
August 5 – 9, 2002	24
September 23 – 27, 2002	14
September 30 – October 4, 2002	26
October 28 – November 1, 2002	32
December 2 – 6, 2002	34
TOTAL	197

Our audit disclosed that this training, while initiated by the Administrator of the Metal/Nonmetal Division in the fall of 2001, was expanded under the direction of MSHA's Director of Education. Through e-mails dated in October 2001, there was a general agreement that the "training" would benefit the entire MSHA organization and MSHA should be consistent in whom the course was offered to and the payment policy to be used. MSHA management told us that the scope of the training could not have been known because this was voluntary training and no estimation was done or could have been done. Based on the e-mails noted above, and an allegation received by the OIG as early as May 2002, there was enough supporting documentation to demonstrate that there could have been a reasonable basis for estimating the potential attendance and costs. The information received through the allegation in May 2002 stated that an estimated \$200,000 was to be spent on this particular training course. While we were not provided documentation to support that estimate, the fact the estimate was close to the actual amount spent on the training gives support that there could have been discussions among MSHA management of the expected attendance and costs.

The DL1-101, Training Authorization and Evaluation Form, states the following:

The DL1-101 is to be used to request, approve and record all training. The DL1-101 may be used as a payment document for a scheduled individual course. A manager or supervisor who wants to purchase an off-the-shelf course or have a consultant design a course for a group of employees must follow standard procurement procedures for obtaining and paying for such training. This requires that a DL1-1 (Department of Labor requisition for Equipment, Supplies or Services) be used to request the appropriate procurement action. Managers and supervisors should consult their servicing procurement or financial services office for further guidance. Completion of a DL1-101 is also required for all training procured through a DL1-1.

Since MSHA management indicated they never intended to compete this course, they did not seek other training providers and did not provide any justification for a sole source award for the training. Based on an interview with the training provider, we were told that, "there were certainly others who could have provided this training, but he [*Sheppard*] knew of no one who did offer to provide such a training course." Based on statements made by MSHA's Director of Training, MSHA did not use competition in this procurement because of the belief that, as this was individual training, only the DL1-101 could be used as the procurement instrument. We believe a lack of understanding or a failure in applying the requirements noted on the DL1-101 caused MSHA to not consider the FAR's requirement for competitive procurement.

Also, MSHA management stated this certification was based on passing an exam that would be given after this training was received. Our audit disclosed the

examination to become a CMSP is the exclusive property of the International Society of Mine Safety Professionals (ISMSP) and there is no requirement of the ISMSP that a person wishing to sit for the exam attend the course offered by Ben W. Sheppard & Associates. However, based on information provided by MSHA management, Ben W. Sheppard has exclusive rights to the ISMSP's training materials that are used in the training course he provides. They indicated this would have prevented anyone else from providing training for the ISMSP exam using those specific materials.

While we have not performed procedures to determine an alternative cost of training of the scope of the Ben W. Sheppard & Associates training and CMSP examination, the effect of MSHA management not using competition in this process is that they could not ensure they obtained the best value for the money expended.

## **2. E. L. Hampton Trucking, Inc.**

During the period FY 1999 – FY 2002, MSHA executed 17 contracts totaling \$11,122 to E. L. Hampton Trucking, Inc., for the use of a truck for mine inspector training purposes at the MSHA Academy.

FAR 13.202 (a)(2) states that micro purchases may be awarded without soliciting competitive quotations if the Contracting Officer or individual appointed in accordance with 1.603-3(b) considers the price to be reasonable. Based on statements from Contracting Officers and the training official involved in the procurement, we found MSHA's Contracting Officer did not approve the procurement based on consideration of price reasonableness, but rather the training officer made that determination on behalf of MSHA. The Contracting Officer was first advised of the procurement when a request for payment was received by the procurement office. The training official stated that he had conducted a market survey at the time of the procurement and no other company was found that would provide the truck as required for the training classes. However, based on an unscientific telephone sample in January 2003, we found four trucking companies who indicated they could provide the type of service involved in this procurement.

The condition noted above was caused by MSHA's procurement environment that allowed noncontracting personnel to solicit, evaluate, and procure goods and services on behalf of MSHA. As noted in this instance, the warranted Contracting Officer was involved after the fact of the procurement to approve the payment of a purchase made by the training official.

## **3. Former MSHA Employee**

During the period October 2000 through November 2001, MSHA issued four purchase orders totaling \$28,036 to a former employee to provide temporary clerical services.

The first purchase order (Purchase Order No. B2518003, issued on October 3, 2000) was issued in the amount of \$2,484, which is under the FAR \$2,500 requirement for a micro-purchase; as a result, the Contracting Officer was not required to obtain bids or provide a justification explaining the absence of competition.

Purchase Order No. B2518019 (\$10,000 for editing services) was issued without competition on November 1, 2000. The contract file contained no sole source justification or any other support to explain why MSHA did not use a competitive process for this procurement.

On December 19, 2000, MSHA's procurement office sent the following e-mail to the program office:

I will need a SOLE SOURCE justification e-mailed to me on [contractor] please. I thought I had one but, when I went to look in her contracts, I was unable to find one. (Purchasing Agent – Office of Automation) checked in their files also and couldn't find one. . . . When you e-mail me the SOLE SOURCE – I will put a copy of it with the latest requisition; I will also e-mail it to Purchasing, and also put copies in all (...) other contracts.  
THANKS!

The sole source justification attached to Requisition No. 943092 (Purchase Order No. B2518044 for \$8,100) and Requisition No. 002373 (Purchase Order No. B2528026 for \$8,100) stated:

The person who is awarded this contract must have comprehensive knowledge of the Academy's publications and publication procedures in order to maintain the publication history files, and the originals, negatives, and electronic copies of publications. I need to hire someone in this position who will require minimal involvement from me.

Because she is the only person I know who fulfills this requirement, [Contractor] is uniquely suited for this contract. She can maintain the files, word process documents as needed, and perform miscellaneous clerical duties. She can also provide these services with very limited input from me.

The requisitions related to Purchase Order Nos. B2518044 dated December 28, 2000, in the amount of \$8,100 and B2528026 dated November 2, 2001, in the amount of \$8,100 requesting the services of a temporary employee contained the following sole source justification typed into the Description of Services section of the requisition form:

Assistance is needed from a person who is knowledgeable about our publications. The purpose is to organize the publication files, including originals, negatives, and electronic files; track the development and revision of publications; track the location of originals and negatives when they are removed from the official files; organize the course history files; word process drafts; and assist with various other duties associated with publishing course materials.

Vendor: [*Contractor*]

The duties described in the sole source justifications fall into the category of general clerical work. The justifications do not adequately explain the absence of competition. The contract files contained no documentation indicating how the contracting officials had considered the adequacy of the justification in making the decision not to compete the requirement.

We believe the actions by MSHA personnel in this procurement resulted from the procurement environment at MSHA that gave noncontracting personnel an understanding that they could make contracting decisions without input from properly trained Contracting Officers.

### **Conclusion**

MSHA management cannot ensure that these procurement actions were in the best interest of the Government or that all potential sources of supply were given a fair opportunity to provide the needed services.

### **FINDING 1 CONCLUSION**

For the audit period June 2000 through December 2002, MSHA could not show how the Government received the best value or how the contract award process followed Federal laws and regulations to ensure all potential suppliers received a fair opportunity to compete for MSHA's contracts.

**Finding 2 – MSHA  
Circumvented  
Requirements to Procure  
Office Furniture and Travel  
Management Services from  
Required Sources  
(Allegations 14 & 15)**

We received allegations that MSHA failed to use required sources applicable to Federal agencies in acquiring certain supplies and services. The specific actions that were alleged to have violated procurement requirements involved (a) the acquisition of furniture for the Denver office move, for which MSHA originally used a contractor other than Federal Prison Industries (FPI, brand name Unicor), and (b) Mon Valley Travel, Inc., which was contracted to provide

travel services for the Pittsburgh Safety and Health Technology Center (PSHTC) in lieu of Carlson Wagonlit Travel and Omega Travel, the required sources for DOL travel.

We found MSHA failed to comply with requirements to use required sources in awarding contracts valued at approximately \$857,000 (\$740,000 for Mon Valley Travel, Inc., and approximately \$117,000 for vendors in lieu of FPI). These lapses were caused by a lack of knowledge of procurement requirements, an environment that allowed nonwarranted officials to engage in unauthorized commitments, and the apparent lack of awareness on the part of MSHA's headquarters procurement officials of the unauthorized procurement activities of its field locations. As a result, the Department violated Federal procurement regulations and was not assured it received the best value for its expenditure of public funds. Further, DOL could have been exposed to claims that required sources were denied revenues as a result of MSHA's failure to honor exclusive arrangements.

**Finding 2a:  
MSHA Did Not Follow  
the FAR in Procuring  
Furniture for the  
Denver Office Move**

FAR Part 8, Subpart 8.602, mandated that agencies use FPI for certain required classes of products, including office furniture, and encouraged agencies to use FPI for other products. Subpart 8.605 established that, for supplies manufactured by FPI, a clearance must be obtained from FPI before other sources are used, except under the following conditions pursuant to

Subpart 8.606:

- Public exigency requires immediate delivery or performance;
- Suitable used or excess supplies are available;
- Purchases are made from GSA of less-than-carload lots of common-use items stocked by GSA (see Schedule A of the Schedule);
- The supplies are acquired and used outside the United States; or
- Orders are for listed items totaling \$25 or less that require delivery within 10 days.



***MSHA Procurements Showed a Pattern of Disregard  
for Federal and DOL Acquisition Rules and Requirements***

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MSHA's move from the Lakewood, Colorado, office to the Denver Federal Center on February 8, 2003, entailed facility design, selection and purchase of furniture, the physical move, and transfer of LAN, mail, and telecommunications to the new facility. MSHA's records show the following move-related purchases of office furniture were obtained from non-FPI sources between February 1, 2001, and September 26, 2002:

Vendor	Document Number	Date	Amount
Kimball Furniture	MIR18138/268	2/01/2001	\$ 3,985.25
Kimball Furniture	B2528170	9/25/2002	\$ 91,176.38
Berco Tableworks	B2528178	9/26/2002	\$ 21,827.32
<b>Total</b>			<b>\$ 116,988.95</b>

According to the FAR, MSHA should have either:

- made these purchases from FPI in accordance with FAR Subpart 8.602;
- attempted to justify the non-FPI procurements under the exceptions listed in FAR Subpart 8.606; or
- sought a clearance from FPI pursuant to FAR Subpart 8.605.

MSHA did not justify the non-FPI procurements under the exceptions listed in FAR Subpart 8.606. In addition, the MSHA Contracting Officer who authorized the purchase orders stated that the agency had not obtained a clearance and that, at the time, some MSHA personnel were not aware FPI was a mandatory source. However, based on statements made by a former Supervisory Contract Specialist, MSHA management was informed in early 2001 and again in early 2002 of the requirement to either use FPI for furniture needed or obtain a clearance from the Department of Justice for the use of another source for the new Denver office. Based on information from Kimball Furniture reviewed during our audit, they were told by MSHA's "procurement team" to proceed with their proposal for the office furniture because FPI could not meet MSHA's requirements and had issued a clearance to MSHA. It was noted through other interviews with MSHA personnel that no such waiver was in fact obtained from FPI. This reported commitment to Kimball was almost a month after the purchase order was issued to FPI for the office furniture.

Despite significant purchases from non-FPI vendors, MSHA ultimately procured the remainder of office furniture from FPI. The original purchase order with FPI, dated September 27, 2002 (1 day after the purchase order with Berco Tableworks and 2 days after the purchase order to Kimball Furniture), was for \$1,032,639.

MSHA management asserted to the auditors that Purchase Order No. B2528170 to Kimball Furniture for \$91,176 was for items that were either not on the FPI schedule of supplies or on the FPI schedule but were in some cases purchased at half the cost of the FPI schedule price. Based on our audit of the purchase order and supporting documents, we found that, for some items on the purchase order and on

the FPI schedule of supplies, MSHA actually paid more than the FPI schedule of supplies price rather than one-half the FPI schedule price. In addition, there is no evidence that MSHA Contracting Officers attempted to follow FAR 8.605 (b) and (c) related to the required process in instances the agency determines FPI prices are higher than a commercial source prices.

In contradiction to management's assertion that certain items on the noted purchase orders were not available on the FPI schedule of supplies, FPI confirmed that, with minor exceptions, in 2002 it did produce almost all of the items on Purchase Order Nos. B2528170 and B2528178 that MSHA claimed were not available through FPI.

Using management's assertion that they did not have to buy certain items through FPI, we could find no evidence in the files to show how MSHA contracting officials followed FAR requirements to compete the procurement, either through the Federal Supply Schedule or under Small Business procurement rules.

MSHA did not follow procurement regulations for all furniture purchased for the Denver office move for the following reasons:

- The Contracting Officer who issued the purchase orders was not aware of the FAR requirement to use a mandatory source.
- MSHA's procurement environment was such that it allowed non-contracting officials to make decisions and enter into unauthorized commitments for goods and services without regard for procurement regulations or in direct disregard of input from warranted contracting officers.

### **Conclusion**

MSHA's use of Kimball Furniture through a sole source award was contrary to the required source requirements in the FAR, as well as regulations requiring full and open competition.

**Finding 2b:  
Improper Contract For  
Operating Travel  
Management Center**

Under its Travel Management Center (TMC) Program, the GSA enters into master contracts for Government travel services. Federal agencies must have a task order in place to receive travel services under the GSA contracts. During our audit period, DOL held exclusive task orders with Carlson Wagonlit Travel (Carlson) and its successor, Omega World Travel (Omega), to

provide travel management services.

As part of our audit related to unauthorized commitments, we found that during the period DOL had an exclusive contract for travel related services with Carlson and subsequently Omega, MSHA had improperly purchased travel services for its Pittsburgh Safety and Heath Technology Center (PSHTC) through another travel company. The unauthorized commitment was the result of the Chief of PSHTC improperly authorizing a task order with Mon Valley Travel on May 15, 2000, by

signing the task order as the Contracting Officer. This action violated FAR 4.101 that allows only Contracting Officers the right to financially obligate Government funds. The reasoning provided by the office Chief in a ratification package sent to the Procurement Review Board was, he believed he had the authority to sign the task order because his predecessor had authorized the previous task order. We were not provided any explanation why the office Chief believed it was appropriate or legal to represent himself as someone with warrant authority.

On August 10, 2000, MSHA issued an administrative information bulletin, A00-46 informing MSHA employees that all DOL employees were required to use Carlson Wagonlit for travel. However, PSHTC continued to obtain travel services from Mon Valley through November 2001, at which time the contract was canceled for the convenience of the Government. During the period from August 2000, through October 2001, communications among the DOL's CFO office, MSHA Administrative Management personnel, finance personnel and PSHTC management indicated the likelihood that payments to MSHA personnel using the unauthorized travel agent might be withheld.

On February 22, 2002, MSHA sent a memorandum to the Assistant Secretary for Administration and Management requesting ratification of the unauthorized commitment with Mon Valley Travel, Inc., for the period of May 20, 2000, to December 31, 2001. The ratification request included a finding that the "contract would otherwise have been proper if made by an appropriate contracting officer in the absence of an exclusive contract." On April 11, 2002, the Procurement Review Board recommended and the Assistant Secretary for Administration and Management approved MSHA's request for ratification of an unauthorized commitment to Mon Valley Travel, Inc., for services provided from May 31, 2000, through November 18, 2001. The decision was based on the PRB's determination that all of the required conditions stated in the Federal Acquisition Regulation's *Ratification of Unauthorized Commitments* were met. The approval was predicated on the fact that services being procured had been provided to and accepted by the government, that the prices charged were fair and reasonable, that funds were currently available, and funds were available at the time the services were provided

The above instance of failure to follow Federal procurement policy and DOL's policy on the use of a required source for all DOL employees was caused by an agency environment that allowed personnel other than warranted Contracting Officers to have an understanding that they had the right to obligate Government funds without any regard for procurement laws and regulations. That was evident when the PSHTC Chief signed the task order with Mon Valley as a Contracting Officer.

The actions described above resulted in MSHA management not being able to ensure they obtained the best value for the Government over the years task orders had been improperly approved by the PSHTC Chief and a potential for adverse rulings on travel card payments that would have affected DOL employees who had followed the travel rules provided to them by PSHTC and other MSHA management.

In addition, based on documentation provided to MSHA management by OCFO personnel responsible for DOL travel policy, the travel company who had been awarded the sole source contract for all DOL travel could have sued the Department for breach of contract because of improper actions of MSHA.

**Conclusion**

MSHA violated an exclusive DOL Nationwide contract with Carlson and subsequently Omega when the Chief of the PSHTC improperly signed an agreement with another TMC for travel for that location only.

**FINDING 2 CONCLUSION**

MSHA's contracting environment did not include policies to ensure required sources were used as required by laws, regulations, and DOL policy. Employees who were not Contracting Officers made contracting decisions.

**Finding 3 – A Potential  
Conflict of Interest Existed  
in the Award of Contracts  
to a Company Owned by a  
Contracting Officer’s  
Spouse (Allegation 16)**

We received an allegation that an MSHA employee contracted with a business owned by a spouse. MSHA management allowed contracting officials to sign purchase orders to obtain services from E. L. Hampton Trucking, Inc., a company owned by the spouse of a warranted Contracting Officer and for whom the Contracting Officer was shown as a corporate officer. Management did not ensure the provisions of laws and regulations designed to stop a conflict of

interest in fact or appearance from occurring were followed. Based on the results of our audit, we also found that contracting procedures for this contract allowed services to be performed by the contractor without a contracting official first approving the services.

Under FAR 3.601 it is directed that, “. . . contracting officer shall not knowingly award a contract to a Government employee or to a business concern or other organization owned or substantially owned or controlled by one or more Government employees. This policy is intended to avoid any conflict of interest that might arise between the employee’s interests and their Government duties, and to avoid the appearance of favoritism or preferential treatment by the Government toward its employees.” FAR 3.602 allows an agency head (or designee) to waive the Conflict of Interest rule “if there is a most compelling reason.” In addition, 18 U.S.C. 208 provides a discussion of acts affecting the personal financial interests of a Government employee. That section states that an employee is considered to have a financial interest if the employee participates personally and substantially as a Government employee in certain contract actions with a company in which the employee or his/her spouse is serving as an officer or employee. The section provides an exception if the Contracting Officer first advises the Government official responsible for appointment to his or her position of the nature and circumstances of the contract, makes full disclosure of the financial interest, and receives in advance a written determination made by the official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from the employee.

The Contracting Officer informed the auditors that she became aware of the potential conflict when a payment for services request was received by the contracting office. Through statements by the employee and her supervisor, we were informed that the employee told her supervisor of the potential conflict regarding a company owned by her spouse and action was taken to ensure that the Contracting Officer was not directly involved in the contract approval. However, we were informed that, although the MSHA employee did not sign any contract documents, she directly supervised an employee who signed purchase orders with E. L. Hampton Trucking, Inc. MSHA personnel also told us that the “Chief of Acquisitions” in the Arlington office had obtained a waiver for this contract from

MSHA's legal counsel (SOL). However, our audit disclosed that there is no documentation that such a request was made to or provided by the SOL. MSHA management could not provide any documentation that would be considered necessary based on 18 U.S.C. 208 or FAR 3.602.

We believe this condition resulted from a procurement environment that allowed noncontracting officials to make procurement decisions and engage in unauthorized commitments for those services as a normal course of action. Although the contracting officials did take steps to ensure the potential conflict of interest was known, the lack of necessary documentation shows a lack of understanding of the laws and regulations related to this area contributed to the conflict in fact or appearance of a conflict of interest.

**FINDING 3 CONCLUSION**

MSHA's decision to award repeated contracts to the spouse of a Contracting Officer represented, at a minimum, the appearance of a conflict of interest and a violation of FAR 3.601.

**Finding 4 - Excessive  
Unauthorized  
Commitments and  
Ratifications Were Made  
(Allegation 17)**

We received an allegation that MSHA used unauthorized commitments as an accepted practice for procurement. During the audit period, MSHA personnel who did not have contracting authority entered into contractual commitments on behalf of MSHA. These actions resulted in unauthorized commitments of Government funds. These conditions existed because of a procurement environment in MSHA that allowed noncontracting personnel to financially

commit MSHA for supplies and services they decided were needed rather than allowing those decisions to be made by contracting personnel with the knowledge and experience to ensure procurement regulations were followed. Based on interviews with MSHA employees, this practice was common and those types of commitments were called “confirming orders” rather than unauthorized commitments. Further statements by MSHA employees noted that the environment was impacted in 2001 when a new Supervisory Contract Specialist was appointed who identified this practice as abusive and took steps to correct the practice. Among those steps was rescinding warrant authority for all regional personnel until training could be provided to help employees understand their duties. Although Procurement Officials issued instructions to address this practice in 2001, some MSHA personnel continued to engage in unauthorized commitments. As noted in finding 2 of this report, Mon Valley Travel was a significant unauthorized commitment entered into by MSHA personnel.

DOLAR Subpart 2901.603-71 provides that the Government generally is not bound by agreements or commitments made to contractors by persons to whom acquisition authority has not been delegated. The process of approving unauthorized commitments after-the-fact is called “ratification.” The FAR Part 1.602-3 requires that agencies take positive action to keep the need for ratification actions to a minimum.

The formal requirement to present all unauthorized commitments for ratification (review by the PRB and approval by the Assistant Secretary for Administration and Management) came toward the end of our audit period, in the form of the August 2002 revision to Department of Labor Manual Series (DLMS) 2, Section 836. Even before the policy was formalized in the DLMS, the understanding was that all ratification requests were to be submitted to the PRB. However, we were told by some MSHA and OASAM personnel that OASAM provided a waiver or otherwise

permitted MSHA to ratify unauthorized commitments under \$2,500 without submitting them to the PRB.<sup>2</sup>

A schedule prepared by an MSHA contracting official listed 53 unauthorized commitments, of which 52 were initiated in 2000 and 2001; one was not dated. Of these, 5 were presented to the PRB and 48 were not. All five of the requests that went to the PRB exceeded the \$2,500 micro-purchase threshold. Of the 48 ratified “in-house” by the MSHA head of Acquisition – Purchasing, Contracts, and Grants, 2 exceeded the \$2,500 micro-purchase threshold (\$5,225 and \$7,875), and should have been submitted to the PRB.

MSHA ratifications of unauthorized commitments represented a significant portion of total ratifications for all DOL agencies during the period. A document provided by an OASAM official in February 2004 showed a total of 18 ratification requests since April 2000, which consisted of the 5 from MSHA and an additional 13 from agencies other than MSHA. MSHA’s five actions represented 28 percent of the total ratification requests received by the PRB during the period.

#### **FINDING 4 CONCLUSION**

MSHA’s procurement environment allowed unauthorized commitments to become the norm, rather than exceptions. Further, MSHA management did not provide adequate support for contracting officials when improper procurement actions resulting in unauthorized commitments were identified. The argument given by management generally related to the urgency of the need or the unusual locations program personnel would be working.

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<sup>2</sup> More recently, the April 27, 2004, revision of the Department of Labor Acquisition Regulation (DOLAR) establishes at 2901.603-3, thresholds under which agency officials may approve ratifications. Only ratification requests above the Simplified Acquisition threshold are now subject to PRB review and Assistant Secretary for Administration and Management ratification. Further, amounts under \$2,500 may be ratified by the head of the contracting office, which is a level below the head of the contracting activity.



**Finding 5 – Deficiencies  
Existed in How MSHA  
Administered Its Contracts  
(Not Based on an  
Allegation)**

Although we did not receive an allegation in this area, during the course of our audit, we found MSHA did not maintain contract file documentation that would support the decisions made by Contracting Officers, despite significant award amounts, including many that exceeded the Simplified Acquisition threshold pursuant to FAR Part 13. As noted in the findings in other sections of this report and below for specific contracts, MSHA management failed to

ensure contracting officials followed even minimum documentation requirements to support decisions on the use of Federal resources. As noted earlier, the contract files for LAN purchases for the Arlington office move did not contain any information to support management’s contracting decisions. The auditors were forced to obtain information on that significant purchase from the two companies involved in the awards. MSHA’s procurement environment, at least through the period covered by our audit, provided opportunity for abuse of the authority to procure supplies and services granted to the agency. From misunderstandings of procurement laws and regulations through willful disregard for those laws and regulations, MSHA management could not ensure the Government received the best value or that all qualified suppliers of supplies and services were afforded an opportunity to compete for significant contract dollars.

FAR Subparts 4.101 and 4.102 require contracting officers and contractors, including each participant in a joint venture, to sign contracts. FAR Subpart 4.101 provides that only Contracting Officers may sign contracts.

FAR Subpart 4.800 provides requirements related to the maintenance of contract files for “all contractual actions.” FAR Subpart 4.801 requires the establishment of files constituting a complete history of the transaction, and 4.802 requires that files be readily accessible to principal users.

According to Subpart 4.800, the Subpart is optional for small purchases and other acquisitions covered by FAR Part 13, *Simplified Acquisition Procedures*. However, Subpart 13.106-3 provides that file documentation should be kept to a minimum, but that data shall be retained “to the minimum extent and duration necessary for management review purposes (see Subpart 4.8).” FAR Subpart 13.106-3(b) details the records maintenance requirements for both oral and written solicitations, and requires explanations regarding the absence of competition if only one source was solicited and the purchase did not exceed the Simplified Acquisition threshold.

FAR Subpart 4.803 presents an exhaustive list of items normally maintained in contract files, including:

- Purchase requests, acquisition planning, and other pre-solicitation documents – 4.803(a)(1)
- Justifications and approvals, determinations, findings, and associated documents – 4.803(a)(2)
- Evidence of availability of funds – 4.803(a)(3)
- Government estimate of the contract price - 4.803(a)(7)
- Cost/price proposals – 4.803(a)(10)(iii)
- Source selection documentation – 4.803(a)(13)
- Justification of the type of contract – 4.803(a)(22)
- The original signed award and all modifications – 4.803(a)(26)

In addition, FAR Subpart 13.106-3 states that, before making award, the Contracting Officer must determine that the proposed price is fair and reasonable.

MSHA's procurement actions with respect to two vendors – ARTI and Envisions – provide examples of inadequate contract files we found during our audit.

**Contracts Awarded to Advance Resource Technology, Inc.**

We reviewed 14 procurement actions with respect to Advance Resource Technology, Inc. (ARTI), with obligations of \$2,106,887.23 in FYs 2001 and 2002. We found the following weaknesses in the ARTI contract files:

- Five did not provide evidence of a consideration of the type of contract vehicle used in the award.
- Eight did not show a GSA Federal Supply Schedule contract number to support management's assertion that all ARTI contracts were awarded using Federal Supply Schedule procedures.
- Fourteen did not have evidence that the Contracting Officer followed FAR requirements for use of the Federal Supply Schedule procedures to prove more than ARTI was considered during the award process.

**MSHA Procurements Showed a Pattern of Disregard  
for Federal and DOL Acquisition Rules and Requirements**

PO#	Total of Award	Date of Order	File Identified the Contractor Type	GSA # On Contract	Evidence of Considering Other Suppliers
B2707689	43,165.00	08/16/00	Y	N	N
B2518008	24,986.15	10/06/00	Y	Y	N
B2717507	2,805.00	11/03/00	Y	N	N
B2717509	240,304.90	11/04/00	N	N	N
B2717520	91,834.56	11/29/00	N	N	N
B2717529	281,785.62	12/15/00	N	N	N
B2518063	46,059.00	01/18/01	Y	Y	N
B2717597	160,586.00	03/08/01	N	N	N
B2717659	83,200.00	06/29/01	N	Y	N
B2717689	98,836.00	09/12/01	Y	N	N
B2528018	9,920.40	10/24/01	Y	Y	N
B2727520	170,659.66	12/18/01	Y	N	N
B2727519	843,590.30	12/21/01	Y	Y	N
B2522553	9,154.64	09/27/02	Y	Y	N
Total	\$2,106,887.23				

**Table 1 Irregularities in ARTI Purchase Order Files**

**Contracts Awarded to Envision**

We reviewed 19 Envision purchase orders/contracts totaling \$10,781,173.80. We found the following significant weaknesses in the Envision contract files:

- Four did not include a statement of work (SOW), as discussed in FAR Part 8.405 for service contracts.
- Seven did not include a GSA Federal Supply Schedule number in the contract file.
- Seventeen sole source justification statements were not adequate.
- Seventeen contract files had no evidence that the Contracting Officer considered any supplier other than Envision.

**MSHA Procurements Showed a Pattern of Disregard  
for Federal and DOL Acquisition Rules and Requirements**

PO #	Date of Order	Total of Award	SOW	GSA # in Contract File	Justification Adequate for Sole Source	Evidence of Considering Other Suppliers
B2717014	10/26/00	22,770.00	Y	N	N	N
B2717170	11/2/00	177,500.00	Y	Y	N	N
B2717515	11/13/00	23,139.60	Y	Y	N	N
B2717514	11/14/00	23,040.00	Y	Y	N	N
B2717525	12/05/00	24,240.00	Y	N	N	N
B2717524	12/05/00	24,240.00	Y	N	N	N
B2717539	12/29/00	151,500.00	Y	Y	N	N
B2717541	12/29/00	300,000.00	Y	Y	N	N
B2717556	1/17/01	291,342.00	N	Y	N	N
B2717584	2/28/01	182,252.00	Y	Y	N	N
B2717594	03/07/01	1,038,228.00	N	Y	N	N
B2717593	3/07/01	830,422.00	Y	Y	N	N
B2717625	4/24/01	77,552.00	Y	Y	N	N
B2727501	10/18/01	1,277,908.60	Y	Y	N	N
B2727503	10/26/01	2,305,836.80	N	Y	N	N
B2727525	12/21/01	62,926.80	NA	N	NA	Y
B2727541	2/12/02	1,500.00	NA	N	N	N
B2727545	2/14/02	4,776.00	NA	N	Y	Y
J8R23001	3/05/02	3,962,000.00	Y	N	N	N
TOTAL		\$10,781,173.80				

**Table 2 Irregularities in Envision's Purchase Order Files**

Although MSHA management asserts that the ARTI and Envision files contain sufficient paper documentation and electronically available contract documentation to minimize the risk to the Government, we believe this is not the case.

**FINDING 5 CONCLUSION**

MSHA did not properly document its contract actions. Although minimum documentation was an acceptable method of documentation, our audit found that in some cases the contracts had no documentation available to support the contract decision. In contract files for ARTI and Envision, we found the files lacked any evidence to ensure the Contracting Officer followed Federal Supply Schedule procedures of considering other Federal Supply Schedule contractors in the selection process. Because of the lack of information to show how or if that consideration was performed, MSHA management could not ensure the Government obtained the best value.

**Finding 6 – We Could Not Conclude Whether Actions Taken Against Two Contracting Officers Were Retaliatory, as Alleged (Allegations 8, 18, & 20)**

We received allegations from different sources asserting that MSHA had taken adverse personnel actions against two Contracting Officers in response to their having questioned procurement actions taken or planned by other MSHA officials.

In the first case, we received an allegation that a Supervisory Contract Specialist had been fired for travel card abuse after “not going along with management to cover up illegal procurements.”

We found that the Contract Specialist had been involved in a number of disputes with program management, including disputes with an immediate supervisor. These disputes included (1) removing contracting warrants granted to program personnel because the Contract Specialist believed those persons lacked necessary training, (2) identifying an ongoing practice of unauthorized procurement commitments, (3) management not following procurement regulations in the purchase of LAN equipment for the Arlington office move, and (4) the Contract Specialist’s supervisor and another MSHA employee not using a required source for office furniture and not obtaining a waiver from having to use that source. In addition, MSHA management told us that after the Contract Specialist came back from leave, the Contract Specialist accepted a detail assignment with OASAM without discussing the move with an immediate supervisor or upper management.

We also found that the Contract Specialist had misused a Government travel card on approximately 20 occasions from December 2001 through early April 2002, and that MSHA’s management considered disciplinary actions against this employee for this misuse. The Contract Specialist told the OIG that these instances of misuse occurred during a time when the employee was attending to a serious personal matter. Nevertheless, the Contract Specialist received a letter, dated July 19, 2002, which proposed removal from employment with MSHA. The Contract Specialist’s supervisor told the OIG that this action was taken because the employee’s position allowed the employee unlimited warrant authority and, therefore, the abuse was considered very serious and justified the termination action.

We evaluated travel card statements and records maintained by the Government travel card company related to actions taken against MSHA employees for travel card violations during the audit period, and we reviewed copies of e-mails between MSHA personnel and OCFO personnel for the periods from 2000 through 2002. We found travel card abuse by MSHA employees had been an ongoing management issue. The travel card company identified numerous instances of employees not paying a travel card balance, while the e-mails discussed abuses of employees not paying travel card bills after being reimbursed, and employees using a travel card while not on official travel. Despite these abuses, we found, during the period June

2000 through December 2002, only one other instance where an MSHA official considered proposing termination as disciplinary action for travel card abuse. In this instance, there were discussions regarding the removal of an employee; however, the proposed and sustained action was a 3-day suspension.

In response to our request for current policies to address the issue of misuse of travel cards by MSHA employees, we were provided copies of a memorandum sent to all MSHA employees by the Assistant Secretary on December 9, 2002. This memorandum noted that unauthorized use of a Government travel card could result in disciplinary actions being taken against the employee. We were also given a memorandum from the Assistant Secretary to MSHA managers and supervisors dated December 10, 2002, that stated, "It is the Department of Labor and MSHA policy to take appropriate disciplinary action in response to employee misconduct, including unauthorized use or payment delinquency involving a government travel card. As a general rule, discipline is intended to be remedial rather than punitive." It should be noted that both of these policy statements were provided after the actions against the employee were taken.

In the second instance, we received allegations from various sources that an employee was forced to retire in retaliation for refusing to process improper procurement actions, and that MSHA later canceled a vacancy announcement for a job for which the employee had been selected.

In late February 2002, on the same day as a dispute over a planned procurement of MSHA equipment, a procurement official (the same supervisor noted in the first instance above) included in the official's Daily Record of Events a notation to move the employee from a Regional Office to MSHA's headquarters in Arlington, Virginia ("move to Arlington"). On May 20, 2002, 3 months later, a reorganization plan was submitted to and approved by the Assistant Secretary that included moving this position from the Regional Office to Arlington. The employee decided to retire instead of accepting the transfer.

In addition, after the employee retired, an MSHA Regional Office manager selected the employee for a different position and issued a start date to the employee, but withdrew the offer after being contacted by MSHA's Arlington Office of Administration and Management. The Director of Administration and Management told the OIG that he decided to inform Regional Office management that the employee was under investigation by the OIG for violating a provision of the FAR while previously employed as a Contracting Officer for MSHA. The OIG had been given a request from the Director to look into this issue; however, there was no such investigation in progress involving the employee.

According to the employee, the actions taken by MSHA management contributed to the employee leaving the agency prematurely. The employee filed a complaint of retaliation against MSHA, which was eventually resolved through an agreement between the employee and the Agency.

**FINDING 6 CONCLUSION**

We could not conclude whether actions taken against two Contracting Officers were retaliatory, as alleged, because there was insufficient direct evidence to support their claims.

## **Overall Audit Conclusion**

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Based on the results of our audit, we believe there was a history of MSHA career and non-career management creating an environment for contracting decisions to be made without regard to the intent of laws and regulations that insist on full and open competition as an overriding principle of every award made by a Federal Government official. That principle is highlighted in the FAR guidelines and should be considered over what is “legal” or expedient in an agencies’ procurement environment. It is not reasonable to believe that Congress intended streamlining of Federal procurement to replace responsible actions on the part of agency Contracting Officers or agency management. MSHA consistently demonstrated a lack of regard for FAR principles and fostered an environment that allowed, or at the very least had the appearance of allowing, best value through competition to be replaced with awarding contracts based on favoritism or convenience. Contracting Officers, although responsible for ensuring the agency followed procurement laws and regulations, were not always allowed to do their jobs, but rather were implementing decisions made by others. The lack of segregation of the procurement function from the program function allowed program officials to exert undue influence over procurement personnel.

The lack of adhering to the spirit as well as the letter of procurement law, leaves MSHA vulnerable to protest from vendors who were not given the opportunity to compete for MSHA’s contracts, or required sources that were not used in all cases.

In order to review how MSHA was currently documenting procurement activity, we judgmentally selected five MSHA procurement documents from the Department’s General Ledger system based on FYs 2003 and 2004 activity. We performed our work in MSHA’s Arlington, Virginia, office on June 25, 2004. None of the contracts reviewed were located in MSHA’s Beckley, West Virginia, or Denver offices. Based on our observation of available files, we found that the contract files generally contained information needed to support procurement actions and that such actions were appropriate. However, there remains a lack of segregation between the procurement function and the program, which continues the risk that procurement failures could occur in the future.



## Recommendation

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We recommend that the Deputy Secretary of Labor direct the DOL Procurement Executive to rescind MSHA's procurement authority, reassign such authority, and ensure that it is completely independent of MSHA.

### **AGENCY RESPONSE**

The Deputy Secretary responded that it will be important to assess the full breadth and effectiveness of procurement reforms initiated subsequent to the audit period covered by our report, in order to make an informed judgment on the audit report's recommendation.

### **OIG's CONCLUSION**

As we previously stated in our report, while the degree of compliance with procurement laws and principles may improve, unless a change is made to the current structure there remains a lack of segregation between the procurement function and the program, continuing this inherent risk that procurement failures could occur in the future. As we also noted, the granting of such separate procurement authority in the Department is limited — MSHA is one of only two agencies with this authority. Therefore, the Department should look carefully at the *bona fide* need to grant such authority in light of the inherent risk. Our recommendation remains unresolved.



Elliot P. Lewis  
October 20, 2004

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## **Exhibits**

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**Exhibit A**

The following contracts are provided to support finding 1a. As noted in that finding, contract documentation was such that the type award was not apparent. This table also illustrates a pattern of awarding contracts on a short-term basis. While we have not concluded the best value for the Government was not ensured by MSHA, management cannot be certain that the best value was received.

<b>ENVISION TECHNOLOGY PARTNERS, INC.</b>			
<b>PO Number</b>	<b>Date</b>	<b>Amount</b>	<b>Description</b>
B2717014	10/26/00	22,770.00	Analyst and Programming Support for the Common Platform Project
B2717170	11/2/00	177,500.00	Network Engineer Support
B2717515	11/13/00	23,139.60	Analyst and Programming Support for the Common Platform Project
B2717514	11/14/00	23,040.00	Analyst and Programming Support for the Common Platform Project
B2717525	12/05/00	24,240.00	Analyst and Programming Support for the Common Platform Project
B2717524	12/05/00	24,240.00	Analyst and Programming Support for the Common Platform Project
B2717541	12/29/00	300,000.00	Analyst and Programming Support for the Common Platform Project
B2717539	12/29/00	151,500.00	Training Support for Common Platform Project
B2717556	1/17/01	291,342.00	Training Support for the Common Platform Project
B2717584	2/28/01	182,252.00	Intermediate Java Developers
B2717594	03/07/01	1,038,228.00	Analyst and Programming Support for the Common Platform Project
B2717593	3/07/01	830,422.00	Security Network Services
B2717625	4/24/01	77,552.00	Document Management Analyst
B2727501	10/18/01	1,277,908.60	Network Engineers
B2727503	10/26/01	2,305,836.80	Analyst and Programming Support for the Common Platform Project
B2727525	12/21/01	62,926.80	Software Licenses
B2727545	2/14/02	4,776.00	Software Licenses
B2727541	2/12/02	1,500.00	Trainer Expenses for INET Training
J8R23001	3/05/02	3,962,000.00	System Engineering & Software Development Services
<b>Total</b>		<b>10,781,173.80</b>	

**Exhibit B**

The following table of contracts is provided to support finding 1b. As noted in that finding, contract documentation did not support the awards. As shown in the table, MSHA used the vendor to purchase 520 desktop computers at a cost of \$1,062,492, and 744 laptop computers at a cost of \$2,296,816. Planning those type of purchases and ensuring more sources participate in the process might have provided a better value for the Government.

<b>T/Clark and Associates, Inc.</b>			
<b>PO Number</b>	<b>Date</b>	<b>Amount</b>	<b>Description*</b>
B2707677	7/14/00	8,955.00	Printers
B2707715	9/26/00	12,822.50	Laptop Computers
B2707717	9/29/00	51,290.00	Laptop Computers
B2717501	10/24/00	12,820.00	Laptop Computers
B2717502	10/28/00	21,546.00	Desktop Computers
B2717523	12/5/00	1,878.07	Upgrade for Desktop
B2717527	12/11/00	2,363.07	Desktop Computers
B2717544	1/3/01	23,234.44	Desktop Computers
B2717547	1/8/01	7,787.90	Desktop Computers
B2717549	1/8/01	1,879.46	Desktop Computers
B2717551	1/10/01	11,354.76	Desktop Computers
B2717553	1/10/01	5,896.00	Laptop Computer
B2717563	1/24/01	9,462.30	Desktop Computers
B2717558	2/2/01	55,856.00	Desktop Computers
B2717575	2/12/01	12,635.68	Desktop Computers
B2717572	2/13/01	2,705.72	Desktop Computers
B2717562	2/14/01	68,656.94	Laptop Computers
B2717588	3/6/01	6,982.30	Desktop Computers
B2717590	3/6/01	1,396.46	Desktop Computers
B271718A	3/13/01	15,503.18	Laptop Computers
B271718B	3/13/01	6,644.22	Laptop Computers
B271718C	3/13/01	5,473.48	Laptop Computers
B271718D	3/13/01	2,516.74	Laptop Computers
B271718E	3/15/01	2,214.74	Laptop Computers
B271718F	3/15/01	103,485.90	Laptop Computers
B271718G	4/2/01	11,166.96	Laptop Computers
B271718H	4/19/01	24,787.40	Laptop Computers
B271718I	5/1/01	50,454.80	Laptop Computers

<b>T/Clark and Associates, Inc.</b>			
<b>PO Number</b>	<b>Date</b>	<b>Amount</b>	<b>Description*</b>
B271718K	5/16/01	429,531.12	Laptop Computers
B2717608	3/30/01	11,059.98	Desktop Computers
B2717609	3/30/01	16,874.50	Desktop Computers
B2717610	3/30/01	5,948.38	Desktop Computers
B2717611	3/30/01	2,941.74	Laptop Computer
B2717612	4/2/01	14,375.00	Desktop Computers
B2717613	4/3/01	28,809.12	Data/Video Projection
B2717632	5/2/01	125,992.26	Desktop Computers
B2717634	5/16/01	42,186.50	Desktop Computers
B2717645	5/30/01	4,991.35	Desktop Computers
B2717646	6/6/01	4,666.38	Desktop Computers
B2717648	6/12/01	3,810.00	Desktop Computers
B2717661	7/10/01	7,363.38	Desktop Computers
B2717666	7/24/01	3,827.48	Desktop Computers
B2717678	8/14/01	6,914.50	Laptop Computers
B2717680	8/20/01	1,432.00	Desktop Computers
B2717681	8/20/01	51,883.28	Desktop Computers
B2717682	8/20/01	38,764.20	Laptop Computers
B2717684	8/21/01	8,182.61	Desktop Computers
B2717703	9/6/01	2,664.00	Desktop Computers
B2717706	9/12/01	113,000.00	Laptop Computers
B2717710	9/13/01	40,195.34	Tape Drives
B2717711	9/14/01	3,816.00	Desktop Computers
B2712660	7/10/01	34,357.84	Desktop Computers
B2717723	9/25/01	2,030.41	Desktop Computers
B2727507	11/1/01	5,501.00	Desktop Computers
B2727509	11/21/01	5,500.82	Laptop Computers
B2727511	12/6/01	2,415.10	Laptop Computers
B2727513	12/6/01	2,330.30	Desktop Computers
B2727514	12/7/01	4,052.94	Desktop Computers
B2727517	12/17/01	1,219.58	Desktop Computers
B2727524	12/21/01	5,178.48	Desktop Computers
B2727526	12/21/01	9,518.76	Laptop Computers
B2727527	1/2/02	3,485.30	Desktop Computers
B2727535	1/22/02	6,292.23	Laptop Computers
B2727536	1/23/02	3,334.00	Desktop Computers

**MSHA Procurements Showed a Pattern of Disregard  
for Federal and DOL Acquisition Rules and Requirements**

**Exhibit B**

<b>T/Clark and Associates, Inc.</b>			
<b>PO Number</b>	<b>Date</b>	<b>Amount</b>	<b>Description*</b>
B2727537	2/5/02	7,135.08	Desktop Computers
B2727546	2/26/02	11,156.46	Laptop Computers
B2727558	3/29/02	3,630.00	Desktop Computers
B2727569	3/29/02	61,430.76	Laptop Computers
B2727570	4/2/02	78,544.80	Laptop Computers
B2727574	4/3/02	49,328.44	Desktop Computers
B2727575	4/3/02	2,646.31	Laptop Computer
B2727576	4/3/02	4,830.00	Desktop Computer
B2727578	4/4/02	6,102.55	Desktop Computer
B2727579	4/5/02	249,664.42	Laptop Computer
B2727563	4/16/02	12,580.00	Desktop Computer
B2727587	4/16/02	1,220.51	Desktop Computer
B2727590	5/2/02	139,422.09	Laptop Computer
B2727592	5/2/02	5,600.00	Upgrades for Laptop
B2727604	5/28/02	1,752.90	Desktop Computer
B2727607	6/5/02	5,258.70	Desktop Computer
B2727609	6/5/02	2,120.11	Laptop Computer
B2727618	6/27/02	1,373.93	Desktop Computer
B2727611	6/11/02	2,713.41	Printers
B2727613	6/12/02	2,381.42	Laptop Computer
B2727614	6/17/02	2,826.13	Laptop Computer
B2727621	7/3/02	3,611.33	Laptop Computer
B2727622	7/5/02	8,078.66	Laptop Computer
B2522517	8/14/02	112,482.44	Laptop Computer
B2522518	8/15/02	74,528.96	Desktop Computer
B2522521	8/29/02	63,070.00	Desktop Computer
B2522538	9/20/02	53,933.12	Laptop Computer
B2522539	9/23/02	59,598.60	Desktop Computer
B2522540	9/23/02	174,882.24	Laptop Computer
B2522541	9/23/02	36,720.68	Desktop Computer
B2522542	9/23/02	288,237.12	Laptop Computer
B2522546	10/1/02	207,788.90	Laptop and Desktop**
B2522551	9/25/02	44,323.80	Printers
B2522552	9/25/02	41,496.75	Desktop Computer



**Exhibit B**

<b>T/Clark and Associates</b>			
<b>PO Number</b>	<b>Date</b>	<b>Amount</b>	<b>Description*</b>
B2522555	9/30/02	26,588.16	Printers
B271717J	5/2/01	75,095.68	Laptop Computers***
B2717559	2/2/01	94,776.60	Data/Video Projector***
<b>Total</b>		<b>3,613,146.96</b>	
*Description identifies the main purchase (computer and any related upgrades or accessories).			
**Total of \$207,788.90 was based on the requisition because the contract was not in the file.			
***Contract was not in the official file but was located with the paid invoice.			

**Exhibit C**

The following schedule of contracts is provided to support finding 1c. As noted in that finding, contract documentation did not provide evidence of how MSHA had properly determined the use of GSA Federal Supply Schedule, 8(a) FAST program or sole source rules.

<b>Advanced Resource Technology, Inc.</b>			
<b>PO Number</b>	<b>Date</b>	<b>Amount</b>	<b>Description</b>
B2707689	8/16/00	43,165.00	Network Cabling Services
B2518008	10/06/00	24,986.15	LAN Support
B2717507	11/03/00	2,805.00	Network Engineering Services
B2717509	11/04/00	240,304.90	Network Admin Services
B2717520	11/29/00	91,834.56	Network Admin Services
B2717529	12/15/00	281,785.62	IT Security services
B2518063	1/18/01	46,059.00	LAN Support
B2717597	3/08/01	160,586.00	Network Engineering Services
B2717659	6/29/01	83,200.00	Network Cabling Services
B2717689	9/12/01	98,836.00	Network Cabling Services
B2528018	10/24/01	9,920.40	Academy LAN Support
B2727520	12/18/01	170,659.66	LAN Admin
B2727519	12/21/01	843,590.30	IT Security Services
B2522553	9/27/02	9,154.64	E-Gov/GPEA Support
<b>Total</b>		<b>2,106,887.23</b>	

## **Appendices**

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## **Background**

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The Federal Mine Safety and Health Act of 1977 (Mine Act) created the Mine Safety and Health Administration. The agency, previously known as Mining Enforcement and Safety Administration within the Department of Interior, was transferred to the Department of Labor (DOL) through provisions of the Mine Act.

MSHA is headquartered in Arlington, Virginia. MSHA's mission is to administer the provisions of the Mine Act and to enforce compliance with mandatory safety and health standards as a means to:

- eliminate fatal accidents;
- reduce the frequency and severity of nonfatal accidents;
- minimize health hazards; and
- promote improved safety and health conditions in the Nation's mines.

MSHA is one of only two agencies within DOL with acquisition authority for the purchase, lease and renewal of lease(s) of all Federal Information Processing resources.

MSHA's Directorate of Administration and Management (DAM) plans and directs all MSHA administrative and management services. This directorate serves as MSHA's authority on financial and human resource requirements, overseeing the Agency's budget process, directing human resource development programs, and managing all property management, acquisition, contractual, and grant-related transactions.

On May 20, 2002, the Assistant Secretary for Administration and Management approved a reorganization of DAM. The reorganization established a new Acquisition Management Division (AMD). The AMD is responsible for the solicitation, negotiation, award, and administration of MSHA contracts, grants, cooperative agreements, and interagency agreements. AMD has staff located at MSHA's headquarters in Arlington, Virginia, and at the Mine Safety and Health Academy in Beckley, West Virginia.

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# **Objectives, Scope, Methodology, Sampling, and Criteria**

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## **Objectives**

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The OIG conducted an audit to assess the merits of allegations we received regarding MSHA procurements and other matters, and for those allegations that were substantiated, recommend appropriate corrective or other action.

## **Scope**

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We considered allegations received (see Appendix C) between May 2002 and May 2003 pertaining to MSHA procurement and contracting procedures, Government travel and purchase card usage, computer security, and personnel issues. Our audit period was June 1, 2000, through December 31, 2002.

We conducted audit fieldwork between January 27, 2003, and October 20, 2004, at the following MSHA locations: Arlington, Virginia; Denver, Colorado; Beckley, West Virginia; and the Frances Perkins Building, Washington, D.C. In addition, we conducted fieldwork in DOL's Office of the Assistant Secretary for Administration and Management headquarters, which is located in the Frances Perkins Building, Washington, D.C.

We conducted our audit in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States, and we performed such tests as we considered necessary to satisfy our audit objective. Because our objective was limited to assessing the merits of allegations, we did not test MSHA's internal controls, and, therefore, we do not provide any assurances over the extent to which internal controls were properly designed or operating in MSHA.

## **Methodology**

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Due to the sensitivity of some of the allegations we received, the OIG initiated the audit by making simultaneous unannounced visits on January 28, 2003, to MSHA offices located in Arlington, Virginia; Beckley, West Virginia; and Denver, Colorado. Throughout the audit, we conducted in-person and telephone interviews with MSHA, OASAM, and SOL personnel, and MSHA contractors and vendors. The OIG's Office of Labor Racketeering and Fraud Investigations assisted us in conducting some interviews. We consulted with OIG procurement specialists and legal counsel, and with OASAM specialists regarding procurement requirements. We communicated

## **Appendix B**

and received information by e-mail and facsimile as needed. We reviewed a variety of materials, including allegation letters and e-mails, contract files, internal memoranda, DOL accounting records, travel vouchers, invoices, payment transactions, personnel records, day planner pages, and other documents. We also ran special tests to search for unauthorized software on MSHA computers. Finally, we compared vendor listings against DOLAR\$ employee files and agency telephone listings to identify possible conflicts of interest.

We encountered some difficulties in accessing information. In some instances, contract files did not contain the required documents to support the type of procurement or show whether FAR requirements were met. In such cases, copies of documents were requested and received directly from the vendors. In a number of cases, individuals who were involved in procurements during the audit period had retired. In two cases, persons of interest were involved in legal proceedings against MSHA. These limitations may have affected the completeness of the information we obtained.

On June 18, 2004, we provided MSHA a Statement of Facts that detailed the information we developed in the audit. MSHA responded on July 8, 2004, and we carefully considered MSHA's response in preparing this report.

## **Sampling**

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To assess the merits of allegations that certain employees who misused their DOL travel cards were treated unfairly compared to other employees in similar situations, we judgmentally selected a sample of 72 MSHA employees who filed travel vouchers during the audit period and analyzed all vouchers they submitted during that time. In total, we analyzed 606 vouchers associated with the 72 sample employees. We also sampled over 1,600 Citibank transaction records for MSHA employees.

We judgmentally selected procurement contracts from the contract and purchase order log maintained by the Beckley office of MSHA. We focused on high-dollar and information technology procurements. We selected some contracts because they were specifically mentioned in the allegations.

## **Criteria**

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Although we received numerous communications and inquiries during the course of our audit, we did not consider all to be allegations. For purposes of this report, we defined an allegation as a clear assertion that wrongdoing occurred, which was presented in writing or by e-mail to the OIG. In some cases, the same allegation was received from more than one source.



The following criteria apply to the four findings related to procurement:

**1. FULL AND OPEN COMPETITION**

**Federal Acquisition Regulation (FAR)**

The Federal Acquisition Regulation (48 CFR Chapter 1) prescribes policies and procedures that all executive agencies are required to follow in purchasing goods and services. The regulations are intended to ensure full and open competition in the awarding of Federal contracts, but also allow Federal contract officers to justify sole source contracts or limited competition under specific conditions. By outlining the responsibilities of Federal contracting officers, the FAR promotes administrative efficiency and accountability.

*Competition requirements*

FAR Subpart 6.1 requires contracting officers to use full and open competition in soliciting bids for and awarding Federal contracts. However, FAR, Subpart 6.3 describes specific circumstances where a Federal contract officer may recommend making a sole source award or limit competition to eligible women and minority-owned small businesses.

*Sole source procurement*

FAR Subpart 6.302 specifies conditions the Government may use to justify source award. These conditions include:

- 6.302-1 – Only one responsible source and no other supplies or services will satisfy agency requirements;
- 6.302-2 – Unusual and compelling urgency;
- 6.302-3 – Industrial mobilization; engineering, developmental, or research capability; or expert services;
- 6.302-4 – International agreement;
- 6.302-5 – Authorized or required by statute;
- 6.302-6 – National security; or
- 6.302-7 – Public interest.

*Set-asides*

Additionally, FAR recognizes that each Federal agency sets goals related to contracting with women and minority-owned small businesses, as required by legislation such as the *Small Business Act* and *HUBZone Act*. FAR Subparts 6.203-6.205 describe provisions related to set-asides for eligible 8 (a)

## Appendix B

businesses or HUBZone small businesses. Contracting officers are not required to provide separate justification or findings to limit competition to 8(a) contractors.

### *Federal supply schedules*

FAR Subpart 8.4 describes requirements for purchasing from the GSA Schedules [also referred to as Multiple Award Schedules (MAS)] that identify businesses with long-term government-wide contracts to provide goods and services to government agencies.

FAR Subpart 8.404 requires that an agency wishing to buy off the MAS must use the GSA Advantage! Online shopping service or review the catalogs or price lists of at least 3 MSA contractors before choosing a vendor. However, the agency may consider such factors as past performance and maintenance availability in its decision.

### *Simplified acquisition procedures – “Splitting” Prohibited*

FAR 13.106 describes procedures for soliciting competition, evaluating quotations or offers, awarding and documenting contracts. The FAR requires that agencies use simplified acquisition procedures as much as possible when buying supplies or services that are not higher than the simplified acquisition threshold or that are \$2,500 or less.

However, FAR Subpart CFR 13.003 (c) (2) prohibits agencies from “splitting” purchase orders. In “splitting,” an agency may break down the total requirement into several orders so it can avoid requirements that apply to purchasing goods or services above \$2,500. In purchases \$2,500 or less (micro-purchases), the contracting officer may recommend an award without obtaining competitive quotes if he or she considers the price to be reasonable [FAR Subpart 13.202(a)(2)].

### *Communication with offerors*

FAR Subpart 15.3 prescribes policies and procedures to select a source or sources in competitive negotiated acquisitions. According to FAR Subpart 15.306, the contracting officer may not communicate with offerors after they have submitted proposals in any way that shows favoritism, provides technical information about another offeror’s proposal, or reveals an offeror’s price without their permission. However, this section of the FAR allows the contracting officer to let an offeror know that the

Government considers its price too high or too low and to provide the analyses supporting this conclusion.

*PRB Approval Required*

**Department of Labor Manual Series (DLMS) Section 2, (Administration)**

DLMS 2-817 (a) (1) requires that the Procurement Review Board approve contracted advisory services for sole source contracts or purchase orders of any amount.

*Limitations of using DL 1-101 form to procure training*

**DL Form 1-101**

This form provides instructions to request, approve and record all individual training. The form states that the form is not an appropriate payment document for purchasing off-the-shelf training courses or services to provide training for a group of employees. In order to contract for group training, the agency manager or supervisor must use Form DL-1 (Department of Labor Requisition for Equipment, Supplies or Services).

However, a DL 1-101 must also be completed for all training obtained through form DL-1.

**2. USE OF MANDATORY SOURCES**

**Federal Acquisition Regulation (FAR)**

FAR Subpart 8.6 contains requirements for Federal agencies using and not using Federal Prison Industries, Inc., for purchases of certain listed products.

**3. CONFLICT OF INTEREST**

**Federal Acquisition Regulation (FAR)**

FAR Subpart 3.601 requires that a Federal contracting officer must avoid conflict of interest and not knowingly award a contract to a Government employee or to a business or other organization owned or substantially owned or controlled by one or more Government employees.

## Appendix B

### 4. CONTRACT ADMINISTRATION

Once the contract is awarded, proper administration is necessary to ensure that accurate and timely information and documentation about the contract are publicly available. Current contract files ensure accountability and provide documentation on the proper use of public funds.

#### **Federal Acquisition Regulation (FAR)**

##### *Incomplete contract files*

FAR Subparts 4.101-102 require that both the contracting officer and contractor, including each participant in a joint venture, sign the original contract.

FAR Subparts 4.801-803 require the contracting officer to establish and maintain accessible files that show a complete history of the transaction. Examples of required file information include: purchase requests, pre-solicitation documents, justifications, and evidence of fund availability, cost/price proposals, original signed award and modifications.

FAR Subpart 13.106-3 states that before making an award the contracting officer must determine that the proposed price is fair and reasonable.

##### *Ratification of unauthorized contracts*

Under FAR Subpart 1.602-1(b), a Federal contracting officer can enter into a contract only if the officer can show that all legal requirements, executive orders, regulations, and all other procedures, including clearances and approvals, have been met.

However, FAR Subpart 1.602-3 prescribes how agencies can rectify or ratify unauthorized commitments. While such procedures are available, if needed, the FAR states that agencies should be proactive and prevent unauthorized commitment of funds as much as possible.

FAR Subpart 1.602-3 provides that the Head of the Contracting Activity may ratify an unauthorized commitment, unless a higher-level official is designated by the agency.

**CFR, Title 48, Chapter 29, Part 2901, Subpart 2901.6, Section 2901.603-71**

This section addresses procedures for ratifying unauthorized contract awards. It states that "The Government is not generally bound by agreements or contractual commitments made to contractors or prospective contractors by persons to whom acquisition authority has not been delegated. . . ."

**Department of Labor Manual Series (DLMS) Section 2, (Administration)**

DLMS 2, paragraph 832 (e) defines Head of Contracting Activity as the Assistant Secretary, Commissioner, or other chief official for each DOL Agency and the Director, Business Operations Center.

DLMS, Section 836 (b) (3) requires the Procurement Review Board (PRB) to review the ratification of unauthorized obligations (as defined in DOLAR 2901.603.71) and for the Assistant Secretary for Administration and Management to approve them.

**Department of Labor Acquisition and Reporting (DOLAR) System**

DOLAR 48 CFR 2901.603-71(c)(2), required agencies to submit all contract ratifications to the Head of the Contracting Activity for concurrence. Once approved, the request was to be submitted to DOL's Policy Review Board (PRB) for ratification with the concurrence of the Assistant Secretary for Administration and Management, or denial of the ratification request.

**Note:** Under DOLAR 48 CFR 2901.603-3, **as revised on April 27, 2004**, agency officials may approve ratifications under established thresholds. Only ratification requests above the Simplified Acquisition threshold are now subject to PRB review and Assistant Secretary for Administration and Management ratification. With the revision, the head of the contracting office (a level below the Head of the Contracting Activity) may ratify amounts under \$2,500. (The current DLMS 2, Paragraph 832e, defines Head of Contracting Activity, in the case of MSHA, as the Director, Administration and Management.)

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## **SUMMARY OF ALLEGATIONS**

<b>Allegation Number</b>	<b>Source</b>	<b>Nature of Allegation</b>	<b>Report Reference</b>
1	Anonymous letter to OIG received 9/25/2002	MSHA's Assistant Secretary gave two of his friends contracts that were supposed to be bid.	Page 8
2	Letter to OIG dated 2/22/2003	If a Deputy Assistant Secretary of MSHA continued to be involved with the International Society of Mine Safety Professionals, then the contracts awarded to Ben Sheppard and Gerry Silver [PAI] constituted a conflict of interest.	Pages 8
3	Letter to OIG Dated 8/2/2002	An MSHA Deputy Assistant Secretary and the International Society of Mine Safety Professionals benefited financially from the contract awarded to Ben W. Sheppard & Associates.	Page 9
4	Letter to OIG dated 8/2/2002	Training provided by Ben W. Sheppard & Associates could have been obtained free of charge from MSHA.	Page 9
5	Anonymous Letter to OIG dated 9/25/2002	An MSHA Contracting Officer was forced to retire because MSHA did not want him talking about misdeeds involving contracts and requisitions.	Pages 9
6	Anonymous letter to OIG dated 9/25/2002	Illegal software was loaded on MSHA computers and payments were made to MSHA personnel in connection with the improper actions and covered up by management personnel.	Page 10

**Appendix C**

Allegation Number	Source	Nature of Allegation	Report Reference
7	Hotline complaint received 9/20/2002	The Office of the Assistant Secretary for Administration and Management (OASAM) tried to hire an MSHA employee while the employee was on administrative leave for misuse of a purchase card and/or the employee was detailed to OASAM with unlimited warrant authority while on administrative leave.	Pages 10-11
8	Anonymous letter to OIG received 9/25/2002	An MSHA employee was transferred to OASAM for not assisting in covering up improper procurement actions and was terminated illegally by MSHA for misuse of a Government travel card.	Page 11 and Pages 49-51
9	Letter to OIG dated 8/2/2002	Performance Associates International was not uniquely qualified to evaluate training programs; therefore, the sole source award was not properly justified.	Pages 27-31
10	Letter to OIG dated 8/2/2002	MSHA management did not intend to open the contract being performed by PAI to competition as required by Federal procurement law.	Pages 27-31
11	Letter to OIG dated 8/2/2002	Ben Sheppard & Associates was not uniquely qualified to provide training services; therefore, the sole source award was not properly justified.	Pages 31-33



Allegation Number	Source	Nature of Allegation	Report Reference
12	Letter to OIG dated 3/18/2003	MSHA program officials verbally ordered the computers for the Arlington office move before a procurement action had been taken and they did not order from the lowest bidder.	Pages 24-27
13	Letter to OIG dated 10/7/2002	High dollar procurements were placed without competition, or consolidation, by using small purchase vehicles and increasing the procurement by millions of dollars over a period of time.	Pages 12-35
14	Letter to OIG dated 10/7/2002	The Denver move team was planning to purchase system furniture commercially from Kimball Furniture without seeking a waiver from the Department of Justice, or competing the requirement as required by regulations.	Pages 36-40
15	Hotline complaint received 10/20/2002	MSHA management approved illegal procurement of furniture for the Denver office without consideration of the cost or regulations.	Pages 36-40
16	Anonymous letter to OIG dated 9/25/2002	An MSHA employee contracted with a businesses owned by a spouse.	Pages 41-42
17	Letter to OIG dated 10/7/2002	MSHA used unauthorized commitments as an accepted practice for procurement.	Pages 43-44

**Appendix C**

Allegation Number	Source	Nature of Allegation	Report Reference
18	Letter from Sen. Allard's office dated 9/24/2002	An MSHA Contracting Officer was forced to retire because the employee would not take a directed reassignment to Arlington, Virginia. The reassignment was related to the employee's questioning the IT contract awarded to GovConnection.	Pages 49-51
19		An MSHA Contracting Officer was directed by MSHA supervisory personnel to process two purchase orders to cover unauthorized commitments totaling over \$600,000.	Pages 24-27
20	Letter from Sen. Allard's office dated 5/6/2003	MSHA management retaliated against a Contracting Officer when the Contracting Officer applied for and was offered a position with MSHA in Denver and the vacancy announcement was subsequently canceled.	Pages 49-51

## **ACRONYMS AND ABBREVIATIONS**

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ARTI	Advanced Resource Technology, Inc.
BPA	Blanket Purchase Agreement
CMSP	Certified Mine Safety Professional
DLMS	Department of Labor Manual Series
DOA	Direct Order Authorization
DOL	Department of Labor
DOLAR	Department of Labor Acquisition Regulation
DOLAR\$	Department of Labor Accounting and Related Systems
ECS	Electronic Computer Store
FAR	Federal Acquisition Regulation
FAST	Federal Acquisition Services for Technology
FIP	Federal Information Processing
FPI	Federal Prison Industries
GSA	General Services Administration
GWAC	Government Wide Acquisition Contracts
HRD	Human Resources Division
ISMSP	International Society of Mine Safety Professionals
IT	Information Technology
LAN	Local Area Network
MAS	Multiple Award Schedule
MSHA	Mine Safety and Health Administration
NASA	National Aeronautics and Space Administration
NIH	National Institutes of Health
NITAAC	National Institutes of Health Information Technology Acquisition and Assessment Centers
OASAM	Office of the Assistant Secretary for Administration and Management
OCFO	Office of the Chief Financial Officer
OIG	Office of Inspector General
PEIR	Program Evaluation and Information Resources
PRB	Procurement Review Board
PSHTC	Pittsburgh Safety and Health Technology Center
RFQ	Request for Quotes
SBA	Small Business Administration
SEWP	Scientific & Engineering Workstation Procurement
SOL	Solicitor of Labor
SOW	Statement of Work
TMC	Travel Management Center
U.S.C.	United States Code

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## **Agency Response**

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U.S. DEPARTMENT OF LABOR  
OFFICE OF THE DEPUTY SECRETARY  
WASHINGTON, D.C.  
20210

OCT 29 2004

The Honorable Gordon S. Heddell  
Inspector General  
U.S. Department of Labor  
Washington, D.C. 20210

Dear <sup>Gordon:</sup> Mr. Heddell:

I appreciate the opportunity to comment on the Office of Inspector General's audit report that invalidates numerous sensational claims that have been made against the Mine Safety and Health Administration and its senior management; points out significant improvement that MSHA's leadership already has made to remedy historic procurement problems; and offers guidance on issues that need to be addressed going forward.

Most significantly, after a lengthy and exhaustive inquiry, involving numerous interviews and extensive record searches, this audit concludes that each of the serious allegations made against MSHA's top non-career leadership were "*not substantiated*." As we continue to responsibly address challenges facing MSHA's procurement procedures which the audit identifies, this report helps to separate the wheat - historic procurement practices that can and should be fixed - from the chaff: baseless accusations that distract from the important task at hand.

As the audit report notes, there "was a long-term MSHA-wide history of career and non-career management that accepted and fostered a lack of commitment to procurement laws and principles." In fact, several of the most glaring instances of inadequate adherence to federal procurement standards occurred during the previous Administration or before MSHA's current leadership was fully in place. As the report also notes, "the environment was impacted in 2001 when a new Supervisory Contract Specialist was appointed who identified this practice [of unauthorized procurement commitments] as abusive and took steps to correct the practice."

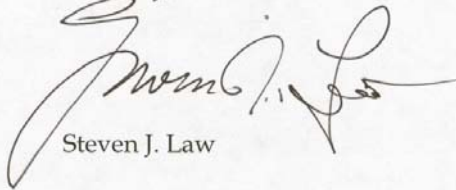
At the same time, because the audit covers only the period between June 1, 2000 and December 31, 2002, it only partially accounts for procurement reforms that have been instituted by the current career and non-career leadership at MSHA *since* that period. The first of these reforms, cited above, was instituted in 2001. The report also observes that, in FY 2003 and 2004, MSHA's procurement files began to have a level of documentation that "would have addressed some of the

**Appendix E**

findings in this report." Moreover, after its review of MSHA procurement files from FY 2003 and 2004, the Office of Audit report concludes, "we found that the contract files generally contained information needed to support procurement actions *and that such actions were appropriate.*"

It will be important to assess the full breadth and effectiveness of these and other reforms made by MSHA's senior management *after* the audit period, in order to make an informed judgment on the audit report's recommendation.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven J. Law", is written over the typed name. The signature is fluid and cursive.

Steven J. Law