

U.S. Department of Labor

Office of Inspector General—Office of Audit

OFFICE OF JOB CORPS



TRANSFER OF JOB CORPS PROGRAM STRENGTHENED PROCUREMENT PROCESSING BUT IMPROVEMENTS ARE NEEDED TO ENSURE FAIR AND OPEN COMPETITION

Date Issued: September 30, 2008
Report Number: 04-08-003-01-370

BRIEFLY...

Highlights of Report Number 04-08-003-01-370, Transfer of Job Corps Program Strengthened Procurement Processing But Improvements Are Needed to Ensure Fair and Open Competition, to the Deputy Secretary of Labor, issued September 30, 2008

WHY READ THE REPORT

On December 30, 2005, Congress enacted Public Law 109-149, directing the Secretary of Labor to transfer Job Corps program from the Employment and Training Administration (ETA) to the Office of the Secretary (OSEC). The transfer was intended to provide Job Corps greater independence and opportunity for increased efficiency in administering the Job Corps program. As a result of the transfer, responsibility for providing contract support moved from ETA to the Office of the Assistant Secretary for Administration and Management (OASAM).

WHY OIG DID THE AUDIT

We conducted a performance audit to determine what impact has the transfer of the Job Corps program from ETA to OSEC had on Job Corps procurement and contracting practices. Our audit covered July 1, 2005, through September 30, 2007.

READ THE FULL REPORT

To view the report, including the scope, methodologies, and full agency response, go to: <http://www.oig.dol.gov/public/reports/oa/2008/04-08-003-01-370>

September 2008

WHAT OIG FOUND

While the transfer of the Job Corps program from ETA to OSEC strengthened the Job Corps procurement and contracting practices, improvements are needed to ensure contracts are competitively awarded and services are obtained at a reasonable cost.

With the transfer, OSEC implemented a prior OIG recommendation to separate Job Corps procurement functions from program functions. In addition, our examination of 34 contracts, 18 originated by ETA and 16 by OASAM, disclosed nine (26 percent) with deficiencies in the processing of the awards and/or modifications. Specifically, ETA in 7 of 18 (39 percent) contracts and OASAM in 2 of 16 (13 percent) contracts could not demonstrate they always followed the Federal Acquisition Regulation and Department of Labor (DOL) procurement procedures.

WHAT OIG RECOMMENDED

We recommended the Deputy Secretary of Labor ensure that:

- The Assistant Secretary for Administration and Management takes steps to ensure management oversight of contract award and modification processing is conducted and to provide staff training to ensure Federal acquisition and DOL procedures are appropriately followed.
- Agencies seek Procurement Review Board's recommendation and Chief Acquisition Officer's approval for ratification of unauthorized commitments.

The National Director of Job Corps had no comments on the draft report. The Deputy Assistant Secretary for Employment and Training stated that ETA is actively taking steps to improve performance in its contracting operations. Lastly, the Deputy Assistant Secretary for Administration and Management disagreed with our finding that cited a lack of proper justification for a sole source contract award, but agreed with our recommendations.

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Executive Summary

The purpose of the Job Corps Program is to assist eligible youth who need intensive education and training services. The program was appropriated nearly \$1.6 billion in FY 2007, much of which was expended through contracts with private companies. Contractors operate 94 Job Corps centers nationwide and the Departments of Interior and Agriculture operate 28 centers through inter-agency agreements.

On December 30, 2005, Congress enacted Public Law (PL) 109-149, directing the Secretary of Labor to transfer the Job Corps program from the Employment and Training Administration (ETA) to the Office of the Secretary (OSEC). The transfer was intended to provide Job Corps greater independence and opportunity for increased efficiency in administering the Job Corps program. As a result of the transfer, the responsibility for providing contracting support to Job Corps moved from ETA to the Office of the Assistant Secretary for Administration and Management (OASAM).

Our audit objective was to answer the following question:

What impact has the transfer of Job Corps program from ETA to OSEC had on Job Corps procurement and contracting practices?

Results

The transfer of the Job Corps program from ETA to OSEC strengthened Job Corps procurement and contracting practices through the separation of procurement and program functions. In addition, fewer deficiencies were noted in selected contract awards and procurement actions after the transfer. However, improvements are needed to ensure contracts are competitively awarded and services are obtained at a reasonable cost. Our audit of 34 contracts, 18 originated by ETA and 16 by OASAM, disclosed nine (26 percent) to have deficiencies in the processing of the awards and/or modifications. Specifically, ETA in 7 of 18 (39 percent) contracts and OASAM in 2 of 16 (13 percent) contracts could not demonstrate they always followed the Federal Acquisition Regulation (FAR) and Department of Labor (DOL) procurement procedures.

Seven¹ ETA originated contracts totaling more than \$110 million did not follow proper procurement procedures, as described below:

- For one contract modification totaling \$3.1 million, the Contracting Officer (CO) did not obtain the required review by the Department's Procurement Review Board (PRB) nor Chief Acquisition Officer's (CAO) approval.
- ETA modified four contracts without proper approval and justification that resulted in cost increases ranging from 9 to 224 percent above the contract ceiling price.

¹One of ETA's contracts had two deficiencies, which increased the number of deficiencies to eight.

The improper modifications resulted from the award of a contract type that did not provide for a contract ceiling price, inadequate cost justifications, and the lack of proper approval.

- Three contracts lacked necessary documentation, such as technical scoring sheets or a post award announcement, to support that the contracts were properly awarded.

These deficiencies resulted from a control environment that did not provide adequate management oversight to ensure adherence to the FAR and DOL procedures and the lack of adequate staff training in the awarding of the contracts and in the processing procurement actions.

OASAM could not demonstrate that it followed the FAR and DOL procurement procedures in awarding two contracts. OASAM awarded one sole source contract for approximately \$2.4 million for a national call center, citing “only one responsible source will satisfy agency requirements,” even though Job Corps indicated from its market research that there were 18 other capable contractors who could perform the work. In addition, OASAM awarded another contract for \$1.5 million but was unable to provide current cost analysis documentation. We attributed the deficiencies to the lack of management oversight.

Recommendations

We recommend that the Deputy Secretary of Labor ensure that:

1. The Assistant Secretary for Administration and Management takes steps to:
 - a) ensure management oversight of contract award and modification processing is conducted, and
 - b) provide staff training to ensure federal acquisition and DOL procedures are appropriately followed.
2. Agencies seek Procurement Review Board’s recommendation and Chief Acquisition Officer’s approval for ratification of an unauthorized commitment.

Agencies Responses

The National Director of Job Corps stated that Job Corps had no response to the draft report.

The Deputy Assistant Secretary for Employment and Training acknowledged that ETA has areas of concern in its contracting operations and stated that ETA is actively taking steps to improve its performance.

The Deputy Assistant Secretary for Administration and Management (DASAM) concurred with the finding related to the lack of current cost analysis. However, the DASAM disagreed with the finding related to the lack of proper justification for a sole source contact award. The DASAM stated that OASAM took the appropriate actions under the Federal and DOL procurement rules to execute the sole source award and prevent a break in critical services for the Job Corps program. However, the DASAM concurred with OIG's recommendations and stated that OASAM has placed increased emphasis on DOL's procurement policy/oversight function.

OIG Conclusion

We do not disagree with OASAM's explanation regarding the McNeil contract and the need to avoid a service disruption at the Job Corps National Call Center. However, adequate planning and management oversight could have prevented this situation from occurring.

Although the DASAM disagreed with one of our two findings, the DASAM agreed with our recommendations. Therefore, our recommendations remain unchanged.

See Appendix D for the agencies' complete responses to our draft report.

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U.S. Department of Labor

Office of Inspector General
Washington, D.C. 20210



September 30, 2008

Assistant Inspector General's Report

Howard M. Radzely
Deputy Secretary
U.S. Department of Labor
200 Constitution Ave, N.W.
Washington, DC 20210

We conducted a performance audit of the Office of Job Corps (Job Corps) procurement process at the request of the Secretary of Labor. The audit focused on contract awards both before and after the transfer of the Job Corps program from the Employment and Training Administration (ETA) to the Office of the Secretary (OSEC).

On March 30, 2006, the Secretary of Labor transferred Job Corps from the ETA to the OSEC.² Within the OSEC, the Office of the Assistant Secretary for Administration and Management (OASAM) oversees the procurement and contracting practices.

Our audit objective was to answer the following question:

What impact has the transfer of Job Corps program from ETA to OSEC had on Job Corps procurement and contracting practices?

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Our objective, scope, methodology, and criteria are detailed in Appendix B.

Objective – What impact has the transfer of Job Corps program from ETA to OSEC had on Job Corps procurement and contracting practices?

Results and Findings

The transfer of Job Corps program from ETA to OSEC strengthened Job Corps procurement and contracting practices through the separation of procurement and program functions. In addition, fewer deficiencies were noted in selected contract

²Secretary Order 09-2006 formally established the Office of Job Corps within the Office of the Secretary by delegating authority and assigning responsibilities to the National Job Corps Director and other specified agency heads for the effective administration of the Job Corps program.

awards and procurement actions after the transfer. However, improvements continue to be needed to ensure contract awards are fair and competitive and services are obtained at a reasonable cost. With the transfer, the OSEC implemented an Office of Inspector General's recommendation from a prior audit³ concerning the separation of Job Corps procurement functions from program functions. We view the Secretary's actions, coupled with the results of this audit, as an improvement in Job Corps procurement and contracting practices in terms of better separation of duties and a more compliance driven approach to processing procurement actions.

We sampled 34 contracts, 18 originated by ETA and 16 by OASAM. Of the 34 contracts, nine (26 percent) have deficiencies in processing contract awards and/or modifications. Specifically, ETA in 7 of 18 (39 percent) contracts and OASAM in 2 of 16 (13 percent) contracts could not demonstrate they always followed the FAR and DOL procurement procedures.

ETA CONTRACT DEFICIENCIES

ETA contract deficiencies included the following: (1) one contract lacked Procurement Review Board (PRB) review and Chief Acquisition Officer (CAO) approval of a \$3.1 million modification; (2) four contracts had multiple modifications executed without proper approval and justification that resulted in cost increases ranging from 9 to 224 percent above the contract ceiling price; and (3) three contracts lacked necessary documentation such as technical scoring sheets or a post award announcement, to support that the contracts were properly awarded. These deficiencies resulted from a lack of management oversight.

The Contracting Officer did not obtain the required PRB review and CAO approval of a \$3.1 million contract modification

PB Dewberry (Contract No. AE – 11045-01-30) – ETA awarded a five-year contract for \$57,367,955 to provide Architect and Engineer (A&E) support services. The contract period was from November 6, 2000, through November 5, 2005. Although no contract was in effect, PB Dewberry continued to provide, and Job Corps continued to accept, services during the period November 6, 2005, through December 21, 2005. On December 21, 2005, the Contracting Officer (CO) issued modification 16 to the contract, increasing the dollar amount by \$3,118,650 and extending the period of performance through March 5, 2006.

The CO violated departmental policy when executing Modification 16 without first obtaining PRB review and approval by the CAO. Modification 16 required PRB review and CAO approval for the following reasons:

- The modification constituted a sole source acquisition. According to Department of Labor Manual Series (DLMS) 2-836.B.4, all proposed sole source acquisitions

³Job Corps Regional Director's Authority as Contracting Officer Raises Concerns, Audit Report No. 04-07-002-01-370, dated March 30, 2007, page 8.

and assistance actions over the simplified acquisition threshold as defined in the FAR (currently \$100,000) are subject to review by the PRB and approval by the CAO.

- The contract had expired; therefore, the CO had no authority to modify the contract. To continue to administer the contract, the CO needed to seek PRB review and approval by the CAO.
- The modification extended the contract beyond the 5-year maximum period of performance set forth in FAR Part 17.204 (e). The CO should have sought PRB review and approval by the CAO that the extension was necessary to protect the interests of the government.

By allowing PB Dewberry to continue to provide services during the period November 6, 2005, to December 21, 2005, without a valid contract in place, the CO entered into an unauthorized commitment. Further, Modification 16 to the contract, executed without PRB review and CAO approval, also constituted an unauthorized commitment.

An unauthorized commitment is a non-binding agreement to perform services without the approval of the government. As set forth in DLMS 2-836, when an unauthorized commitment does occur, the responsible official must request ratification of the unauthorized commitment from the PRB and CAO. However, the CO did not obtain such ratification of Modification 16 to the PB Dewberry contract.

The CO stated that she was not aware of the DLMS requirement to obtain PRB review and CAO approval for Modification 16.

ETA modified four contracts without proper approval and justification.

These cost modifications increased the original award amount or ceiling price of the contracts from 9 to 224 percent. The deficiencies noted in the four contracts discussed below resulted from a control environment that did not provide adequate management oversight to ensure adherence to FAR and DOL procedures, and a lack of adequate staff training in the awarding of contracts and processing procurement actions. We concluded that the substantial increases in the contract's costs might have resulted in Job Corps not receiving services at the most reasonable cost.

1. Options Years' Cost Not Considered in Determining a Ceiling Price

McNeely Pigott and Fox Public Relations, LLC (Contract No. DOLF041A00002) - ETA did not include all option years cost in determining the ceiling price of the contract. The contract's initial award was for \$1,793,000 to provide communication support and career development services. The period of performance was June 20, 2004, to June 19, 2005, plus three 1-year options at the government's discretion; however, the option years were not included in the contract as future costs and therefore, the contract did

not have a ceiling price. Six modifications increased the total estimated cost to \$5,802,619 (224 percent over the original contract amount).

FAR Subpart 16.601(c) – “Limitations,” states “on time and material contracts may be used (2) only, if the contract includes a ceiling price that the contractor exceeds at his own risk.” It further states that “the CO shall document the contract file to justify the reasons for and amount of any subsequent change in the ceiling price.”

The CO stated that:

ETA did not include pre-priced option year prices for any of the proposed option years. The contract allowed for the placement of firm fixed price or time and materials task orders using labor categories and ceiling rates defined in the contract. Order Number DOLF041A0002 should have been designated a time & materials type order, not a cost reimbursement labor hour type order.

Per the terms and conditions of GSA contract No. GS-23F-0072K, the maximum amount per order was \$1,000,000 and the minimum \$6,000. . . Pursuant to FAR 8.404, ETA awards (sic) an order that exceeded the maximum order amount. For orders exceeding the maximum order threshold, price reductions can be sought. ETA did not request price reductions, and ETA should have established the maximum order ceiling for each of the option years.

2. Cost increases without adequate cost justification

Minact, Inc. (Contract No. DOL – AE94014000) – received contract cost increases without adequate cost justification. ETA awarded a contract for \$37,487,758 to continue the operation of the Memphis Job Corps Center. The contract period was May 1, 2002, through April 30, 2007. By the end of the 5th year, 13 modifications had increased the total contract cost to \$45,742,395, an increase of \$8,254,637 or 22 percent. While the cost of the contract increased significantly, there was no modification to the Statement of Work for additional goods or services.

FAR Subpart 43.102(b) – “Significant Cost Increase” states, “If a significant cost increase could result from a contract modification and time does not permit negotiation of a price, at least a maximum price shall be negotiated unless impractical.”

According to OASAM's procurement personnel who took control of the contract after the transfer of Job Corps program from ETA to OSEC, the \$8,254,637 increase was for operational costs due to targeted salary adjustments, and while the amount was substantial, it was not unusual. However, our review indicated that the justifications provided for contract cost modifications did not provide sufficient information to increase cost under the contract. In addition, foreseeable costs not considered during the evaluation process demonstrate the cost analysis method used was not adequate for evaluating the reasonableness of the cost of goods and services.

3. Fifty-Eight Unauthorized Changes Occurred Without the CO's Approval

Rand and Jones Enterprises Co., Inc. (Contract No. DOLJ051A20011) performed services prior to receiving approval from ETA's CO. ETA awarded a sealed bid contract for a firm fixed price of \$5,784,887 to renovate two buildings and upgrade the HVAC system at the Delaware Valley Job Corps Center. The contract period was January 14, 2005, through April 14, 2006. The final contract cost increased by \$489,894 (9 percent) from \$5,784,887 to \$6,274,781. The increase included \$205,000 for work related to 58 unauthorized changes.

Rand and Jones Enterprises, Inc., submitted the 58 unauthorized changes to Job Corps program manager January 3, 2006, just before the contract expired. FAR 43.202 – "Change Orders," states "Change orders shall be issued by the contracting officer except when authority is delegated to an administrative CO."

A Job Corps official stated:

Because the "Monthly Status Reports" were missing factual information, neither the COTR nor the CO had any prior knowledge of these unauthorized change orders until the General Contractor (GC) asked for payment, which occurred at the end of the project.

We concluded the unauthorized services provided, and subsequently approved for payment, did not receive appropriate oversight to determine whether they were necessary and cost reasonable.

4. The CO and COTR Failed to Include the Costs to Perform a Cleanup of a Known Contaminated Site in the Negotiation of the Contract Price

Wu and Associates, Inc. (Contract No. AE-11793-01-20) – ETA did not consider all services needed in awarding a \$5,875,000 sealed bid construction contract to construct a building at the Wilmington Job Corps Center. Job Corps officials told us they were aware of worksite contamination prior to the issuance of the Notice to Proceed (NTP); however, they did not notify the contractor to provide an estimate for the cost of clean up.

FAR 52.236-2(b) - "Differing Site Conditions," states "The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly."

The COTR told us that it was oversight on part of ETA and Job Corps in not notifying the contractor to obtain the additional estimate of cost. Because ETA and Job Corps did not notify the contractor of the worksite contamination, Wu and Associates

subsequently filed a claim against DOL to recover costs resulting from work delays due to the contamination. ETA issued modifications to extend the period of performance and increased the contract costs by \$2,698,866 (46 percent), which included the \$1,268,779 claim by Wu and Associates for a total contract price of \$8,573,866.

We concluded Job Corps might have incurred excessive cost to have additional services performed under the contract.

Three contracts lacked necessary documentation, such as technical scoring sheets or a post award announcement, to support that the contracts were properly awarded.

Three contracts were missing either the technical scoring sheets or a post award announcement due to poor management oversight. Consequently, we could not validate whether the contracts were awarded fairly. FAR 4.802(a) – “Government Contract Files” states “a contract file should generally consist of (1) the contracting office contract file that documents the basis for the acquisition and award.” The following required documentation was missing.

Technical Scoring Sheets Were Missing

1. McNeely, Pigott and Fox Public Relations, LLC (Contract No. DOLF041A00002) – The contract included three 1-year options. A memo in the contract file, dated June 26, 2004, stated that three contractors were sent “request for quotes,” and a panel evaluated the proposals and issued a score of 108.87 out of 115 percent. There were no scoring documents in the file to show how the scores were reached. ETA’s procurement official confirmed that the scoring sheets were missing from the contract file.

2. WCL Associates, Inc. (Contract No. AE 12072-02-15) – ETA awarded a fixed price A&E design contract for \$1,475,000 to design a 2-story building at the Dayton Job Corps Center. No original scoring documents were available in the contract file. During the contract pre-award phase, the evaluation board ranked WCL Associates first with the highest technical score of 85.6 out of 100 points. The contract was transferred to OASAM during the transfer of the Job Corps program from ETA to OSEC. OASAM staff stated the original scoring sheets were with the A&E support services group, P.B. Dewberry’s office. We requested from P.B. Dewberry the original scoring sheets, but received copies most of which were not legible. OASAM’s procurement official who retained the contract file confirmed that the original documents were missing.

Post Award Announcement Was Missing

3. Du Bose & Associates, Inc. (Contract No. DOLJ041A10040) – ETA awarded a contract for \$882,100 to design a new education building and rehabilitate four dormitories. There was no post award announcement in the contract file regarding the

new contract award. A synopsis was not published in the FedBizOpps⁴ as required for contracts awarded for more than \$25,000 (which allows the public to view the contractor chosen and to protest if necessary). FAR 5.301(a) - “Synopses of Contract Awards” states, “CO must synopsize through the Government-wide Point of Entry awards exceeding \$25,000 that are likely to result in the award of any subcontracts.” The contract was transferred to OASAM during the transfer of the Job Corps program from ETA to OSEC. OASAM’s procurement personnel stated the contract specialist who was assigned the case file overlooked this procedure. ETA’s and OASAM’s procurement officials confirmed that the announcement was not published.

OASAM CONTRACT DEFICIENCIES

OASAM could not demonstrate that it followed FAR guidelines and DOL procurement procedures in awarding two contracts. We attributed the deficiencies to a lack of management oversight and inadequate staff training. The deficiencies may have prevented fair and open competition of contract awards, and services may not have been obtained at a reasonable price.

Sole source contract lacked proper justification

McNeil Technologies, Inc. (Contract No. DOLJ079A25330) – OASAM awarded one sole source contract for approximately \$2.4 million citing “only one responsible source will satisfy agency requirements,” even though Job Corps market research indicated that there were 18 other capable contractors who could perform the work. The contract was to provide continued support to the Job Corps’ National Call Center for a total of \$2,411,432. The contract period was April 16, 2007, through April 15, 2008. The PRB’s recommendation for approval cited “only one responsible source will satisfy agency requirements.”

FAR 6.302-1(i) states “supplies or services may be considered to be available from only one source if the source has submitted an unsolicited research proposal that demonstrates a unique capability.” The service requested under the contract did not require a unique capability; therefore, the authority cited by PRB was not valid.

However, Job Corps officials attributed the necessity for the sole source contract to the COTR who mistakenly processed the paperwork through ETA’s contract office instead of through the new routing lines in OASAM’s Office of Procurement Services (OPS). In addition, other delays in the award process made it impossible to compete the award without a break in service. As a result, OASAM executed a sole source contract to McNeil Technologies, Inc. to continue providing the services until such time that a competitive award could be made.

⁴FedBizOpps – A single point of entry for Federal buyers to publish and for vendors to find posted Federal business opportunities across departments and agencies

OASAM awarded a contract for \$1.5 million without performing a current cost analysis

Tribalco, LLC (Contract No. DOLJ079625632) – OASAM awarded a contract for \$1,527,930 without a current cost analysis. The contract was to assist the Job Corps Data Center by adding two storage array units to the existing Storage Area Network. There was no supporting documentation to indicate that a review of other providers' costs for similar products was performed. In addition, the CO was not sure that a cost analysis was needed. This indicated a lack of staff training on the requirements of FAR and other DOL policies.

FAR - Subpart 15.403-3(a)(3) – “Requiring Information Other Than Cost or Pricing Data” states “the CO must ensure that information used to support price negotiations is sufficiently current to permit negotiation of a fair and reasonable price and information is adequate for evaluating the reasonableness of the price or determining cost realism.”

Recommendations

We recommend that the Deputy Secretary of Labor ensure that:

1. The Assistant Secretary for Administration and Management takes steps to:
 - a) ensure management oversight of contract award and modification processing is conducted
 - b) provide staff training to ensure federal acquisition and DOL procedures are appropriately followed.
2. Agencies seek Procurement Review Board's recommendation and Chief Acquisition Officer's approval for ratification of an unauthorized commitment.

Job Corps Response

The National Director Job Corps stated that Job Corps had no response to the draft report.

ETA Response

The Deputy Assistant Secretary for ETA acknowledged that ETA has areas of concern in its contracting operations and stated that ETA was actively taking steps to improve its performance. Last year, at the request of ETA, a management review of ETA's procurement function was conducted by OASAM. ETA is also emphasizing training not only for the acquisition staff, but also for the offices being supported. All acquisition personnel who have not taken the Federal Appropriations Law and advanced contract administration training courses are being directed to take the classes.

OASAM Response

The Deputy Assistant Secretary for Administration and Management (DASAM) concurs with the finding related to Tribalco, LLC. The DASAM stated that the CO should have ensured that the cost analysis was in the contract file and that it was valid. However, the DASAM disagreed with the finding for McNeil Technologies, Inc. and believes that the CO took the appropriate actions under the Federal and DOL procurement rules to execute the sole source action and to prevent a break in critical services. The DASAM stated that the controlling consideration was not “unique capability.” Instead, this was a situation in which there was only “one responsible source” – the incumbent – who could perform the required work during the period necessary to complete a full and open competition for the required Call Center services.

The DASAM concurs with the recommendations and stated that OASAM has implemented an organizational change, effective August 2007, which created the Office of Acquisition Management Services (OAMS) and placed increased emphasis on DOL’s procurement policy/oversight function. OASAM has added resources to improve the office’s ability to perform these functions, including training and oversight.

On September 19, 2008, OAMS completed a review of ETA’s procurement programs, which included a number of recommendations for improvements and is awaiting ETA’s proposed corrective action plan which is due by October 19, 2008. To close the recommendations, management will continue to provide oversight of contract awards and modifications processing. In addition, early in the first quarter of FY 2009, the Assistant Secretary for Administration and Management/CAO will issue a reminder to DOL agencies about the appropriate reviews and approval for ratification of any unauthorized commitments as required by DOL.

OIG Conclusion

We do not disagree with OASAM’s explanation regarding the McNeil contract and the need to avoid a service disruption at the Job Corps National Call Center. However, adequate planning and management oversight could have prevented this situation from occurring.

Although the DASAM disagreed with one of our two findings, the DASAM agreed with our recommendations. Therefore, our recommendations remain unchanged.

See Appendix D for the agencies’ complete responses to our draft report.⁵



Elliot P. Lewis

⁵Tabs 1 through 3 of OASAM’s response contain supplemental information to support OASAM’s primary response. Due to the volume of those supporting documents, we have elected to not include those additional documents as a part of OASAM’s response in Appendix D.

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Exhibits

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Exhibit 1

**JOB CORPS CONTRACTS
WITH DEFICIENCIES**

Contract Information	Contract Issuing Agency	Initial Award Amounts including Option Years
Rand & Jones DOLJ051A20011	ETA	<u>\$5,784,887.00</u>
Wu & Associates AE-11793-01-20	ETA	<u>5,875,000.00</u>
WCL Associates AE-12072-02-15	ETA	<u>1,475,000.00</u>
PB Dewberry DOL-11045- 01-30	ETA	<u>57,367,955.00</u>
McNeely Piggot DOLFO41A0002	ETA	<u>1,793,000.00</u>
Dubose & Assoc. DOLJ041A10040	ETA	<u>882,100.00</u>
MINACT Inc. AE94014000	ETA	<u>37,487,758.00</u>
Total Contract Costs		\$110,665,700.00
McNeil Technologies DOLJ079A25330	OASAM	<u>2,411,432.00</u>
Tribalco, LLC DOLJ07962632	OASAM	<u>1,527,930.00</u>
Total Contract Cost		\$3,939,362.00

The figures above were rounded to the nearest dollar (7 ETA and 2 OASAM contracts).

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Appendices

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Background

Purpose of the Job Corps Program

Job Corps program assists eligible youth who need and can benefit from, intensive programs in a group setting to become more responsible, employable, and proactive citizens. Education, training, and support services are provided to students, ages 16 through 24 at Job Corps Centers (JCC). The program was appropriated nearly \$1.6 billion in FY 2007 much of which was expended through contracts with private companies. The contractors operate 94 centers nationwide; the Departments of Interior and Agriculture operate another 28 centers via inter-agency agreements.

Secretary's Order for the Transfer

On December 30, 2005, Congress issued Public Law (PL) 109-149⁶, effectively granting Job Corps greater independence and opportunity for increased efficiency in administering Job Corps program, and directed the Secretary of Labor to transfer the Job Corps program from the Employment and Training Administration (ETA) to the Office of the Secretary (OSEC) by March 30, 2006. This new law directed the Secretary of Labor to transfer appropriated funds and the administration of the program to the head of Job Corps, who will have contracting authority. The PL109-149 also provided that Job Corps receive contracting support, as necessary, from the Office of Assistant Secretary for Administration and Management (OASAM).

On March 23, 2006, the Secretary of Labor transferred the Office of Job Corps (Job Corps) from the ETA to the OSEC. Within the OSEC, OASAM oversees the procurement and contracting practices. The transfer of the Job Corps program was not intended to alter the authorities, duties, or activities of Job Corps, as it existed under ETA.

⁶PL 109-149, dated December 30, 2005, Department of Labor, Health and Human Services, and Education and Related Agencies Appropriations Act, 2006

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Appendix B

Objective, Scope, Methodology, and Criteria

Objective

What impact has the transfer of the Job Corps program from ETA to OSEC had on Job Corps procurement and contracting practices?

Scope

We conducted a performance audit of Job Corps' procurement process at the request of the Secretary of Labor. Our audit focused on procurements made both before and after the transfer of the Job Corps program from ETA to OSEC. We sampled 34 contracts awarded between July 1, 2005, and September 30, 2007.

Fieldwork was conducted at Job Corps, ETA, and OASAM's national offices in Washington, DC. In addition, we conducted fieldwork in two regions, located in Atlanta, Georgia and Dallas, Texas.

In planning and performing our audit, we considered OASAM's internal controls over the contracting functions and obtained completed OIG issued internal control surveys to OASAM procurement groups, Office of the Chief Financial Officer, and the Electronic Procurement System programmer, as well as reviewing policies and procedures and interviewing key personnel. We gained an understanding of the data flows in each audit area, verified the data on EPS versus the contract files, and found the data to be sufficiently reliable. We documented a description of the controls. Our testing of internal controls focused on the controls related to our objective of assessing compliance with significant laws, regulations, and policies and procedures, and not on the adequacy of internal controls overall. Weaknesses noted in our testing are discussed in the results and findings of this report.

Methodology

To gain an understanding of the procurement process, we reviewed the FAR, DLMS, and the OASAM Compendium for Job Corps procurement. We interviewed senior officials and staff with ETA, Job Corps, and OASAM to gather additional information. To ensure ETA and OASAM complied with Federal regulations and DOL policies and procedures, we reviewed the 34 contracts against DLMS and the FAR requirements for the processing of each contract according to the type, i.e. architect and engineering, construction, media, or outreach and admission. In addition, to determine if all procurement documentation was processed and included in the contract files as required by FAR, we reviewed scoring sheets for each proposal, cost analysis justifications, justification for sole source contracts, statement of work, contract offer document with price, date and option years, appropriated funding section completion, and modifications.

Contract Testing

To determine the impact of the transfer of Job Corps procurement practices, we compared both ETA and OASAM procurement processes by reviewing 18 contracts that were issued under ETA prior to the transfer and 16 contracts issued by OASAM after the transfer. In addition, we interviewed the Job Corps National Director about her contracting authority and the use of OASAM to perform contracting functions for Job Corps. We obtained an understanding of OASAM's internal controls as they relate to the procurement process

Sampling Plans

Our sample consisted of 34 contracts, which included 18 ETA originated contracts, and 16 OASAM originated contracts.

To develop sampling plans as appropriate when planning substantive tests, we obtained a universe of 278 ETA originated Job Corps contracts. We used Excel program software to sort the list, removed duplicates, filled in missing information, and selected the first sample of contracts. The contracts were drawn randomly from each region. We limited our fieldwork to three regions, because the National Office and two regions are the only sites to issue contracts in 2007. We selected 18 contracts from a statistical sample for review. Three of the 18 contracts were regional contracts and the remaining 15 contracts were issued from the National Office.

We expanded our contract testing to compare ETA's procurement process to OASAM's procurement process. We randomly selected 18 ETA contracts. We obtained a second universe of 79 contracts originated by OASAM in 2007 and selected 16 contracts for review. Two of the 16 were issued at regional level and the remaining 14 at the National Office level.

Criteria:

We used the following criteria to perform this audit.

- DLMS 2, Chapter 800, Section 836 - Ratification of Unauthorized Obligation
- Federal Acquisition Regulations, issued March 2005 -Volume I, Subparts 1-53:
- Memorandum - Office of Job Corps from The Deputy Secretary - Job Corps Transfer Guidance
- OASAM Compendium for Job Corps Procurement – March 1, 2007
- Public Law 109-149 – Dec. 30, 2005 - 109th Congress, Depart of Labor Appropriations Act, 2006

- The Secretary's Order 9-2006 – Establishment of the Office of Job Corps within the Office of the Secretary; Delegation of Authority and Assignment of Responsibility to its Director and Others
- Title I Subtitle C - Job Corps - Public Law 105-220 August 7, 1998

Auditing Standards

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

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Appendix C

Acronyms and Abbreviations

A&E	Architectural and Engineering
CAO	Chief Acquisition Officer
CO	Contracting Officer
COTR	Contracting Officer Technical Representative
DLMS	Department of Labor Manual Series
DOL	Department of Labor
EPS	Electronic Procurement System
ETA	Employment and Training Administration
FAR	Federal Acquisition Regulation
NTP	Notice to Proceed
OASAM	Office of the Assistant Secretary for Administration and Management
OPS	Office of Procurement Services
OSEC	Office of the Secretary
PRB	Procurement Review Board
PL	Public Law

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Appendix D

Auditees' Responses

U.S. Department of Labor

Office of Job Corps
Washington, D.C. 20210



SEP 23 2008

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

FROM: ESTHER R. JOHNSON, Ed.D.
National Director

A handwritten signature in cursive script that reads "Esther R. Johnson".

SUBJECT: Response to Draft Audit Report 04-08-003-01-370

Thank you for the opportunity to respond to this draft audit report. JC has no response to the report.

U.S. Department of Labor

Employment and Training Administration
200 Constitution Avenue, N.W.
Washington, D.C. 20210



SEP 23 2008

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

FROM: BRENT R. ORRELL *Brent R. Orrell*
Deputy Assistant Secretary

SUBJECT: Transfer of Job Corps Program Strengthened
Procurement Processing but Improvements Are
Needed to Ensure Fair and Open Competition
Audit Report Number: 04-08-003-01-370

The Employment and Training Administration (ETA) has no technical comments in response to the Discussion Draft Report No.: 04-08-003-01-370.

ETA acknowledges that we have areas of concern in our contracting operations and is actively taking steps to improve this performance. Last year, at the request of ETA, a management review of ETA's procurement function was conducted by OASAM to assess ETA's internal procurement controls and ensure compliance with procurement law, regulations, policies, and procedures. Effective July 1, 2008, ETA began instituting changes which will minimally require competition for all task orders above the micropurchase threshold. However, the improvements to the statements of work and the methods for competing these services will need to be improved over time. ETA is also emphasizing training not only for the acquisition staff, but also for the offices being supported, as this will have an impact on the timeline and effort required for each competition. We conducted onsite contract administration training in August, and have scheduled Federal Appropriations Law training in October, and advanced contract administration training in November. All acquisition staff that have not had these courses are being directed to take these classes.

We appreciate the opportunity to review the discussion report and look forward to working with you.

SEP 24 2008

U.S. Department of Labor

Office of the Assistant Secretary
for Administration and Management
Washington, D.C. 20210



SEP 22 2008

MEMORANDUM FOR ELLIOT P. LEWIS
Assistant Inspector General for Audit

FROM: EDWARD C. HUGLER
Deputy Assistant Secretary for Operations

SUBJECT: Transfer of Job Corps Program Strengthened
Procurement Processing, but Improvements Are
Needed to Ensure Fair and Open Competition
Draft Audit Report Number 04-08-003-01-370

The responds to the Office of Inspector General's (OIG) September 18, 2008, draft audit report on the impact of the transfer of the Job Corps program from the Employment and Training Administration (ETA) to the Office of the Secretary (OSEC), as directed by Congress in December 2005. As part of the transfer, the responsibility for providing contracting support services to Job Corps moved from ETA to the Office of the Assistant Secretary for Administration and Management (OASAM).

We appreciate the largely favorable review by OIG, including recognition that contract and procurement practices have been strengthened under OASAM—both through the separation of this function from the Job Corps' program administration and improved conformance to the Federal Acquisition Regulation (FAR) and DOL policies. For clarity in this aspect of the draft report, it is suggested that the first sentence under Results in the Executive Summary be revised read: "The transfer of the Job Corps program from ETA to OSEC strengthened Job Corps contract and procurement practices through the separation of program functions from procurement functions, which were assigned to OASAM."

Our response to the draft audit report's findings related to OASAM follow:

- *Sole source contract lacked proper justification*—McNeil Technologies, Inc.; Contract No. DOLJ079A25330:

The draft audit report concludes that the authority cited for this sole source contract action, FAR 6.302-1—"Only one responsible source and no other supplies or services will satisfy agency requirements"—was not valid as a basis for this action. For the reasons outlined below, we disagree and believe that the OASAM Office of Procurement Services (OPS) took the appropriate actions under the Federal and DOL procurement rules to execute this sole source action and prevent a break in critical services for the Job Corps program.

SEP 22 2008

By way of background, during the period when OASAM/OPS was assuming the functions of contract support for Job Corps from ETA, the subject contract with McNeil Technologies, Inc. was found to have lapsed due to administrative error. The services provided under the contract were operation of Job Corps' National Call Center, which includes recruiting support, such as admissions and enrollment information about Job Corps, as well as emergency assistance to students and the Job Corps Centers nation-wide. The Call Center processes some 400,000 calls annually.

OPS notified Job Corps that to re-establish contractual coverage, a sole source justification would have to be approved by the Chief Acquisition Officer (CAO) after review by the Procurement Review Board (PRB), and any support provided outside of the period of contract coverage would have to be ratified.

The PRB recommended approval and the Assistant Secretary for Administration and Management (ASAM)/CAO concurred by memorandum of March 26, 2007, authorizing a sole source award of an interim bridge contract for up to 12 months, pending the re-competition of the requirement for Call Center services (**TAB 1**). Subsequently, the PRB recommended approval and the ASAM/CAO concurred by memorandum of April 10, 2008, authorizing an extension of the sole source award for up to three months to accommodate completion of the competitive contracting process (**TAB 2**).

The authority under which the sole source bridge contract award was approved was amply articulated in the PRB's recommendation of March 26, 2007. Addressing the Job Corps' request, the PRB opined:

"Your request cites as authority for this sole-source extension the Federal Acquisition Regulation (FAR) Part 6.302-2, meaning unusual and compelling urgency. The PRB advises that FAR 6.302-2 may be invoked when the cause of urgency is beyond the agency's control, and administrative errors do not fall under this rubric. However, the PRB finds grounds for approval under FAR 6.302-1 which applies when there is only one responsible source and no other supplies or services will satisfy agency requirements. When a service is essential and a commitment has been made to commence a competitive process for the requirement, it is logical to assume that the incumbent is the only responsible source for the relatively short period of time required to process a solicitation. Further, timely execution of the option in 2006 could have continued McNeil's Call Center service under the original contract. Finally, there is no basis or logic to award any other contractor for the bridge period." [Emphasis Added]

As Job Corps explained in its request, the facts abundantly supported, and the review by the PRB validated, uninterrupted continuation of the Call Center services was essential to the Job Corps program, thus necessitating a sole source bridge contract while a full and open competition was completed for the required services. In addition, the requisite commitment to commence a competitive process for those services was made and consummated.

The draft audit report appears to maintain that the PRB's premise for the sole source bridge contract is flawed because: "*FAR 6.302-1(i) – 'Only one responsible source and no other supplies or services will satisfy agency requirements' states 'supplies or services may be considered to be*

available from only one source if the source has submitted an unsolicited research proposal that demonstrates a unique capability'. The service requested under the contract did not require a unique capability; therefore, the authority cited by PRB was not valid."

OASAM disagrees with draft audit finding that FAR 6.302-1 (i) is the applicable FAR authority under the circumstances of this procurement action and maintains—as did the PRB—that FAR 6.302-1(a)(2) applies. The controlling consideration was not “unique capability” as suggested by the draft audit report. Instead, as clearly expressed by the PRB, this was a situation in which there was only “one responsible source”—the incumbent—during the period necessary to complete a full and open competition for the required Call Center services. As succinctly concluded by the PRB—“... *there is no basis or logic to award any other contractor for the bridge period.*”

In view of the forgoing, we ask that this finding in the draft audit report be eliminated in the final audit report.

- *OASAM awarded a contract for \$1.5 million without performing a cost analysis—Tribalco, LLC; Contract No. DOLJ079625632:*

OASAM concurs with this finding. The Contracting Officer should have ensured that the cost analysis was in the contract file and that it was valid. For completeness we note that the contract file contained a notation stating the program office (Job Corps) had performed a cost analysis, but this cost analysis was not in file.

Considering the draft audit report in its entirety, OASAM concurs with the recommendations and responds as follows:

- *Recommendation 1: The Assistant Secretary for Administration and Management take steps to ensure management oversight of contract award and modification processing are conducted and provide staff training to ensure federal acquisition and DOL procedures are appropriately followed.*

OASAM implemented an organizational change, effective in August 2007, which created the Office of Acquisition Management Service (OAMS) and placed increased emphasis on DOL’s procurement policy/oversight function. OASAM also added additional resources to improve the office’s ability to perform these functions, including training and oversight. As part of this oversight, OASAM completed a review of the BLS procurement program October 11, 2007. On September 19, 2008, OAMS completed a review of the ETA procurement program, which included a number of recommendations for improvements that are responsive to findings in the draft audit report (**TAB 3**). OASAM is awaiting ETA’s proposed corrective action plan, which is due by October 19, 2008. ETA has been receptive to the OASAM recommendations and we anticipate that the corrective action plan will thoroughly address the issues raised in the draft report.

To resolve and close this recommendation, management will continue a regular cycle of procurement program reviews (at least one DOL procurement function each year), to include

oversight of contract awards and modifications processing. Consistent with the results of those reviews, management will undertake training to ensure federal acquisition and DOL procedures are appropriately followed. In addition, OASAM/OPS management will remind OASAM procurement staff of the need to and management's expectation that cost analyses are validated and maintained in contract files as appropriate.

- *Recommendation 2: Agencies seek Procurement Review Board's recommendation and Chief Acquisition Officer's approval for ratification of an unauthorized commitment.*

Early in the first quarter of FY 2009 the ASAM/CAO will issue a reminder to DOL agencies about the appropriate reviews and approvals for ratifications of any unauthorized commitments, as required by Department of Labor Acquisition Regulations, Part 2901.602-3, Ratification of Unauthorized Commitments.

As always, we appreciate the opportunity for input and value the OIG's contributions to the management efficiency of DOL programs. If you have any questions, please contact me, or have your staff contact Valerie Veatch at 202-693-7245.

Attachments

cc: Patrick Pizzella, ASAM
Howard M. Radzely, Deputy Secretary
Rob Owen, Counselor
Al Stewart, OASAM
Valerie Veatch, OASAM

Tabs 1 through 3 contain supplemental information to OASAM's written response to the draft report. Due to the volume of documents and the fact that this information is presented as only support for the primary response, we have elected to not include those documents as part of this attachment.

IN ORDER TO REPORT FRAUD, WASTE OR ABUSE, PLEASE CONTACT:

Online: <http://www.oig.dol.gov/hotlineform.htm>

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