

**Appendix D**

**Auditees' Responses**

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**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.**

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