

SEP 20 2000

MEMORANDUM FOR: CHARLES N. JEFFRESS
Assistant Secretary
for Occupational Safety and Health

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FROM: JOHN J. GETEK
Assistant Inspector General
for Audit

SUBJECT: Response to the Senate Committee on Small Business Request -
Audit of OSHA Ergonomics Contracting
Letter Report No. 05-00-008-10-001

This final letter report represents our limited-scope audit of OSHA ergonomics contracting and includes your response to our draft report, which we have designated Appendix A. This report is provided for your information and contains no recommendations. Therefore, no further response is required.

A copy of this report is concurrently being provided to the Senate Committee on Small Business, pursuant to the Chair's request.

If you have any questions concerning this report, please contact Preston Firmin, Regional Inspector General, in Chicago at (312) 353-2416.

Background:

On May 9, 2000, the Acting Inspector General received a request from the Senate Committee on Small Business, chaired by Senator Christopher S. "Kit" Bond, requesting that the Office of Inspector General (OIG) look into the Occupational Safety and Health Administration's (OSHA's) contracting of work related to the ergonomics rulemaking. The request contained five questions related to the use of contractors to review the comments and testimony submitted to the ergonomics docket. On June 15, 2000, Senator Bond supplemented his request with three additional questions relating to OSHA's contracting of expert witnesses.

Objective:

The objective of the audit was to obtain answers to the following specific questions presented to us in the original and supplemental requests of the Senate Committee on Small Business:

1. Is OSHA engaging contractor(s), or other third parties unrelated to the Executive Branch, to review the comments and testimonies submitted to the ergonomics docket (S-777), and if so, how many?
2. Has OSHA done this for other rulemakings, and if yes, which ones?
3. If this is taking place for the ergonomics rulemaking, what quality controls and other checks are in place?
4. How was the contractor(s) selected?
5. What are the deliverables from the contract(s)?
- f. Confirm or negate whether OSHA paid their witnesses to appear at the hearings, and if so, how much.
- g. Confirm or negate that one of OSHA's contractors was also an employee at the same time.
- h. Determine to whom each of the contracts let during this rulemaking went, how much it was worth and the work it covered.

Scope and Methodology:

Our scope and methodology were dictated by the terms of the request we received from Senator Bond. That is, we reviewed contract task orders and purchase orders related to work related to the ergonomics rulemaking. In addition, we reviewed other documents and interviewed OSHA, the Solicitor of Labor (SOL) and the Office of Assistant Secretary for Administration and Management (OASAM) Procurement Services Center officials. As requested, we did not draw conclusions or make recommendations in connection with this work.

The first contracts and purchase orders for the ergonomics standard were awarded in 1983. However, we limited our scope to contract task orders and purchase orders issued around the time the proposed ergonomics standard was issued on November 23, 1999. We applied due diligence in identifying the universe of contract task orders and purchase orders and believe our list is complete in the context of our scope. However, our ability to assure a complete list is impaired because systems to control and

summarize procurement actions related specifically to the ergonomics rulemaking are nonexistent. Therefore, we relied heavily on OSHA officials to identify pertinent procurement actions. This disclosure of an impairment to independent compilation of pertinent contract task orders and purchase orders is not to be construed as a criticism of OASAM or OSHA's procurement control system. On the contrary, it is important to understand that no procurement system can be expected to provide a control for summarizing all of the variable characteristics involved in the procurement actions that are processed.

The limited-scope audit was performed in accordance with Government Auditing Standards, issued by the Comptroller General of the United States. We compiled answers to questions asked by the Senate Committee on Small Business. We did not audit the contract task orders and purchase orders listed in Attachments 1 and 2. Field work was performed from May 31 through August 30, 2000. OSHA's complete Ergonomics Contracting response to our August 30 draft letter report is included as Appendix A to this final report.

Response to Questions :

(1) Is OSHA engaging contractor(s), or other third parties unrelated to the Executive Branch, to review the comments and testimonies submitted to the ergonomics docket (S-777), and if so, how many?

Yes, OSHA does engage contractors to review (analyze/summarize) docket comments and testimonies. We identified three contractors performing this review:

Eastern Research Group
ICF Technologies
Dr. Robert Norman

(2) Has OSHA done this for other rulemakings, and if yes, which ones?

Yes, OSHA has used outsiders for proposed rulemakings since 1983. OSHA provided the following rulemakings as examples, not inclusive:

H-059 Benzene (1983)
H-200 Ethylene Oxide (1984)
H-225 Formaldehyde (1987)
H-020 Air Contaminants (PELs) (1989)
H-370 Bloodborne Pathogens (1989)
H-057 Cadmium (1990)
H-122 Indoor Air Quality (1994)
R-02 Recordkeeping (1996)

(3) If this is taking place for the ergonomics rulemaking, what quality controls and other checks are in place?

To understand the quality controls in place, we will explain the procedures being performed by the contractors to assist OSHA with the docket analysis.

The docket has two uses for OSHA staff. First, the public comments to the proposed standard enable OSHA to amend or clarify the standard before it is finalized. These comments are therefore summarized in the preamble to the final standard, along with OSHA's response which discusses changes made in the standard or reasons it was unchanged. Also, if newly issued standards are challenged in court, the docket is used as the compilation of all the evidence supporting OSHA's rulemaking actions.

The public comments, public and expert witness testimony, and other related documents on a proposed standard are received in the Docket Office, logged in and assigned an exhibit number. Some exhibits also include attachments, such as excerpts from periodicals, books, or studies. The ergonomics docket is very large. Over 7,000 comments alone were received. Some comments are very large – one has 360 attachments.

OSHA has identified 41 topics/issues of importance to the ergonomics rulemaking. OSHA engaged contractors to assist them in managing the volume of comments and other documents included in the docket and in organizing the exhibits into the topics OSHA staff will address in the preamble, which is expected to be 2,500 pages long.

Eastern Research Group (ERG) staff assisted OSHA by reviewing all comment exhibits in order to categorize them by type of comment. Examples of these categories were: those comments that asked for a delay in the rulemaking, those comments that addressed only work restriction protection, and comments consisting of form letters of only one subject. They recorded each comment exhibit in a spreadsheet, noting the type of submission received. This classification by category was necessary so that the exhibits were manageable and could be distributed to ICF Information Technology, Inc. (ICF) and OSHA staffs for further review. Another task ERG staff performed was to tally the exhibits by topic.

OSHA employees reviewed the work done by ERG. Because the ERG categorizing was mostly used for distributing the exhibits to the ICF and OSHA staffs, there were no other controls over this work.

ICF staff is assisting OSHA by providing a software application which streamlines the ergonomics docket analysis function, called bracketing. This operation consists of staff reading the actual text of assigned docket exhibits to "cut" key word references to the topics and "paste" them to a document set aside for this topic. The bracketing results in a collection of all the key word extractions with the exhibit number reference.

Both ICF and OSHA staffs are involved in the computerized bracketing operation. The bracketing operation is not a summary of comments, testimony or data. It merely identifies the location of references to the topics and saves each OSHA writer from having to separately read all the comments in order to identify the topics pertaining to their section of the preamble. The OSHA writers use the reference numbers to locate the exhibits they must summarize in their assigned sections of the preamble.

There are several checks in place to ensure the accuracy of the bracketing work. ICF does a quality check to trace their entries and DOL also has quality controls, which include the following:

As ICF progresses with the bracketing, OSHA writers can immediately access the completed work on their own desktop computers. When OSHA writers refer to the exhibits, they check for completeness (to ensure that all of the reference was obtained from the exhibit) and accuracy (to ensure a word, such as “not” was not omitted from the text). The writer can easily identify when a key word extraction is included in the wrong topic because the subject is not related.

In addition to the OSHA writers, other OSHA staff, called the “SWAT team” are also checking ICF’s work to ensure correct citations and that every reference to the 41 topics has been captured.

SOL staff is summarizing the same sections of the preamble. They are checking the reference of every comment on every issue. Then they give the section to the OSHA writer, such as the writer responsible for the Program Evaluation section of the preamble.

The OSHA manager responsible for the ergonomics rulemaking reviews all contractor deliverables, as do SOL and other staffs. The manager estimates that the preamble will be reviewed 20 times before it is published.

(4) How was the contractor(s) selected?

Per our review of the official contracting file, **Eastern Research Group (ERG)** was competitively procured through an advertised Request for Procurement. There were six offerors and contracts were awarded to all six firms. Only ERG was tasked to review comments and testimony for the proposed ergonomics standard. ERG has also received the most work, but not exclusively related to the ergonomics standard. One other contractor, Tech Law, worked on various standards, including the proposed ergonomics standard, but did not review comments and testimony. Three of the contractors received task orders to work on other standards. One contractor has received no task orders since the contract was awarded.

One of the OSHA Standards employees heard about **ICF’s** electronic system for handling comments for rulemaking. The company did a demonstration of its product for OSHA and OSHA determined

that ICF's product was the best of those they researched. ICF is on GSA's Management, Organizational and Business Improvement Services (MOBIS) Schedule. Since the contractor's placement on the MOBIS Schedule was competitively awarded, no further competition is required, as described in 48 CFR Chapter 1, Part 8.404.

Dr. Robert Norman's services were procured through a purchase order. The amount of the purchase order was below the micro purchase threshold of \$2,500, which requires the agency to obtain bids before selecting the contractor. Nevertheless, OSHA's procurement files showed evidence that two other sources were contacted but unavailable. Therefore, a purchase order agreement was made with Dr. Norman.

(5) What are the deliverables from the contract(s)?

For the contractors identified in Question No. 1, the deliverables pertaining to the review of comments and testimony, as described in the contract task orders and the purchase orders, are detailed below. We did not review any of the deliverables as part of our work.

ERG:

In Task Order No. 19, the deliverable included draft and final versions of the docket analysis.

ICF Technologies:

The purchase order outlined four tasks and the deliverables were combined with the Statement of Work. Task 1 involved installing, refining and maintaining the software application. Task 2 required ICF to train and assist the OSHA staff using the software application. Task 3 discussed preparing the comments for the bracketing operation, including scanning the comments using optical character recognition software, inputting the 41 OSHA topics into the software application, and inputting the assigned exhibit number code which corresponds to each scanned comment. Task 4 required ICF to assist OSHA to categorize excerpts from individual comment letters by issue area. Specifically, OSHA and the contractor will mark up paper copies of all substantive comment letters indicating the issue or issues that each relevant part of the comment letter addresses. In addition, OSHA may ask the contractor to produce reports using data from the docket analysis application; develop draft summaries of comments on particular issues and post them within the application; and assist OSHA in identifying and drafting potential responses to particular comments or sets of comments and post them within the application.

Dr. Robert Norman:

OSHA forwarded to Dr. Norman copies of the literature submitted during the comment period pertaining to back injuries and psychosocial factors. Dr. Norman was to review the literature and

prepare a summary of the evidence presented pertaining to ergonomics and psychosocial issues.

(6) Confirm or negate whether OSHA paid their witnesses to appear at the hearings, and if so, how much.

The basic purchase orders with the expert witnesses contain work in three parts:

Prepare testimony	\$ 3,000
Present testimony	5,000
Provide record analysis and posthearing review	<u>2,000</u>
	\$10,000

The amount each expert witness received depended upon the work performed. For example, one expert witness submitted a prehearing brief but did not testify, and was paid for only that part of the purchase order. OSHA intended for the purchase orders to include travel. However, four purchase orders did not address travel costs and these purchase orders were amended to provide additional funds for the payment of travel, where required.

See Attachment 1 for details of payments to the expert witnesses.

(7) Confirm or negate that one of OSHA's contractors was also an employee at the same time.

We found no individuals who were OSHA contractors and OSHA employees at the same time. Since no names were provided for us to confirm, we simply asked OSHA this question. We were provided the following names of individuals, which we researched:

Darius Sivin - Mr. Sivin worked as an OSHA contractor under a purchase order with the period of performance July 16 through August 31, 1999. He was hired by OSHA on September 22, 1999. Mr. Sivin also worked as an independent consultant for Tech Law, a contractor of OSHA, from January 20 through June 30, 1999.

Rose Darby - Ms. Darby worked as a contractor under three purchase orders. The period of performance on the last one ended December 30, 1999. Ms. Darby was hired by OSHA on May 7, 2000.

Mike Silverstein - Mr. Silverstein was a former Director of Policy in OSHA. He left OSHA in August 1995 and was retained as an expert/consultant from September 1995 to June 1997.

(8) Determine to whom each of the contracts let during this rulemaking went, how much it was worth and the work it covered.

Attached as Attachment 2 is the list of contracts and purchase orders we identified that contain work related to the ergonomics rulemaking. Purchase orders listed in Attachment 1 are repeated for your convenience.

The first contracts and purchase orders for the ergonomics standard were awarded in the late 1980's. However, we limited our scope to contract task orders and purchase orders issued around the time the proposed ergonomics standard was published on November 23, 1999.

We began developing this list by reviewing the official files maintained by the OASAM Procurement Services Center. Then we used the May 26, 2000, OSHA response to Congressman McIntosh (which includes a list of contract task orders and purchase orders containing work related to the ergonomics rulemaking) and the June 28, 2000, response to Senator Enzi (which includes a list of 28 expert witnesses which were paid for testimony on the ergonomics docket) as a check to ensure we had identified all appropriate documents. Additional OSHA files were used when files were not available in OASAM.

We believe that all task orders within our scope are included in this list because we reviewed each task order in the open OSHA contracts. OASAM issues several hundred purchase orders a year for OSHA. Because there is no numbering scheme or list of purchase orders by docket number, there is no easy way to identify purchase orders containing work related to the ergonomics rulemaking. As a result, we relied on lists of purchase orders and files provided by OSHA staff. Due to this environment, there is no assurance that all contract task orders and purchase orders related to the ergonomics rulemaking have been identified.

Attachments