

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

March 18, 2005

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

Gordon:
Dear Mr. Heddell:

I appreciate the opportunity to comment on the Office of the Inspector General's (OIG) audit report concerning the award and management of certain contracts for encryption software – a procurement which began in 2001 and was brought to the OIG's attention by a complainant in July 2003 and by detailed memorandum from the Assistant Secretary for Administration and Management (ASAM) in August 2003.

I would like to give further careful consideration to the recommendations included in your audit report, but make the following initial observations and decisions:

Your first recommendation contemplates the complete removal of the procurement function from the Office of the Assistant Secretary for Administration and Management (OASAM), and the creation of a new acquisition office reporting directly to the Office of the Deputy Secretary. I will carefully weigh the reasons provided for this recommendation, while taking into account the substantial management and procedural protections – as well as high-level personnel changes – that have been instituted by OASAM since the events that gave rise to the OIG's audit.

I concur in principle with Recommendation 2, which calls for an independent process to review and approve decisions to terminate active contracts, or not use products or services that already have been purchased. Such a process could add a measure of oversight that would strengthen the Department's contracts management. It would need to differentiate between terminations due to faulty performance by the contractor and terminations for the convenience of the government, and set an appropriate threshold for reviewing decisions not to use products or services that have been purchased. To this end, I have asked the ASAM to revise the Department's procurement policies to ensure such a review for termination of substantial or otherwise sensitive contracts.

Recommendations 3 and 5 of the OIG audit report urge the Department to reinforce with staff the requirements of conflict of interest laws and regulations, as well as the need to report reasonable suspicions of such conflicts to the OIG. These recommendations flow from the OIG's concerns about the appearance of a conflict of interest with respect to the former Deputy CIO's business relationship with Meganet's Corporate Counsel, which could have influenced her management of the Meganet contract as well as her favorable assessment of Meganet's capabilities, cited by the OIG audit in Finding 3 (pp. 16, 20). The Office of the Solicitor discusses how to avoid conflicts of interest in its required annual ethics seminars. To effectuate the OIG's recommendations with

regard to conflicts and reporting obligations, the Office of the Solicitor will continue to address both subjects in its 2005 ethics training, and appropriate reminders will be sent to employees.

Based upon the extensive documentation provided by OASAM to the OIG in response to its audit, it appears that Recommendations 4, 6 and 8 already have been substantially addressed. In fact, the Department made significant changes to its procurement policies in 2003, in direct response to the Meganet contract problems which the ASAM uncovered and referred to the OIG. Specifically, the Department prohibited any expenditures for sole-source contracts exceeding 10 percent of the amount approved by the Procurement Review Board, and the contract duration approved by the Board, without prior approval from the Department's Chief Acquisition Officer. Further, the Department's information technology (IT) governance structure, which includes the Technical Review Board, limits purchases of IT products prior to obtaining documentation that the products are deployable in the Department's system environment. The Department also has reinforced its policy requiring that pre-award activities are completed and documented prior to execution of any final procurement contract.

In addition, the OIG report reveals that the acts and omissions of certain IT staff contributed to the procurement problems discovered by the ASAM and confirmed by the OIG. It is important to note that OASAM has made significant changes among the staff closest to the award of the encryption contracts audited by the OIG. The former Deputy CIO left the Department in April 2003 and subsequently separated from Federal service altogether. She was replaced by a highly experienced IT professional with substantial knowledge of contracts administration, who has instituted a number of management, training and accountability measures to strengthen the Department's IT acquisition process.

The senior procurement official with responsibility for the software acquisition process audited by the OIG also was replaced. This individual was reassigned by OASAM management a year ago, and a new, experienced contracting professional was hired in August 2004. Both of these highly qualified replacements came from outside the Department of Labor. The Department also has replaced other IT staff who worked closely with the former Deputy CIO. These personnel changes, together with the procedural protections instituted after the Meganet contract, should help prevent such procurement problems in the future.

The OIG's report strongly (and justifiably) criticizes the Department's award of an encryption software contract to Meganet (e.g., "Therefore, there is no assurance that Meganet actually was the only (or best) small business capable of meeting ITC's file encryption requirement." *OIG audit report*, p. 5). On the other hand, the report also questions the Department's decision to set aside the Meganet contract and appears to explicitly endorse Meganet's technical capabilities – relying heavily on representations made by the former Deputy CIO and top Meganet officials.

For example, on p. 17 the report notes, "According to Meganet's Corporate Counsel, Meganet staff successfully responded to all operational concerns raised by DOL at these meetings." It is my understanding that the "Corporate Counsel" cited here is the same individual with whom the Deputy CIO is reported by the OIG to have had an apparent conflict of interest. The report also attaches weight to the fact that "the former Deputy CIO had, prior to her departure from DOL in March 2003, argued that the Meganet products worked and could be implemented." (p. 20) And

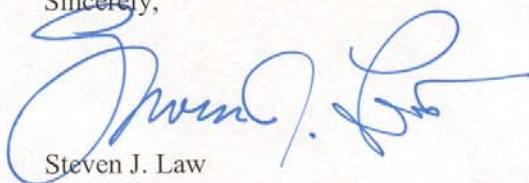
the report states that OIG technical staff “was able to demonstrate the functionality of Meganet’s VME Office 2003 product,” in a controlled test involving three computers that was “assisted by Meganet personnel.” (p. 20)

Based on these views and the Meganet-assisted product demonstration, the report recommends that the Department’s Information Technology Center be directed to conduct a formal test of Meganet products to determine their usefulness in meeting the Department’s encryption needs (*OIG Audit Report Recommendation 7*).

This presumes, however, that even a successful test would enable the Department to deploy the Meganet product effectively. According to Office of Management and Budget (OMB) guidance on PKI as of December 20, 2004 (*See Memorandum M-05-05, “Electronic Signatures: How to Mitigate the Risk of Commercial Managed Services”*), all Federal agencies are required to use one of three OMB approved shared-service providers for PKI services. None of the three OMB-approved PKI service providers utilize Meganet encryption software. Moreover, Meganet has encountered protracted delays in gaining the required security certification for any cryptographic product before it can be deployed on a Federal technology system. In fact, not until January 27, 2005 did Meganet receive the required NIST certification for its encryption software – 3 years after DOL entered into a contract with the company. Considering the change in government-wide direction for the implementation of PKI, and the long-delayed certification of the Meganet encryption software, it is doubtful that the Labor Department could realize significant value from Meganet’s product in the long term, regardless of the results of further testing. By contrast, the Entrust encryption product has been NIST-certified since 1999, and is used by two out of the three shared-service providers for PKI services approved by OMB.

I would like to commend your staff for assembling a thorough report that confirms our concerns about this matter and offers constructive recommendations to prevent contracting problems in the future. We will continue to assess our progress – and take appropriate actions – to enhance the procedural and personnel changes that have already been instituted by the Department since the events that gave rise to the OIG’s audit.

Sincerely,



Steven J. Law