

U.S. Department of Labor

Inspector General
Washington, D.C 20210



JAN. 16, 1998

MEMORANDUM FOR: J. DAVITT McATEER
Assistant Secretary for Mine Safety and Health

FROM: CHARLES C. MASTEN
Inspector General

SUBJECT: Review of Selected Procurement Issues Mine Safety and Health Administration
Report No. 12-OEI-98-MSHA

This memorandum presents the results of a review by the Office of Inspector General (OIG), Office of Evaluations and Inspections, of selected procurement actions of the Mine Safety and Health Administration (MSHA). The review, initiated in response to a congressional referral, did not confirm the allegations that MSHA intentionally circumvented building construction thresholds requiring congressional approval or engaged in widespread fragmentation of procurements. We concluded that the concerns raised in these areas were based upon information which was generally inaccurate or not currently valid. Since no issues requiring corrective action were identified during this review, this memorandum report is provided for information purposes and does not require a response.

I. Background

The Assistant Secretary for Mine Safety and Health requested that the OIG review the concerns raised in correspondence, dated August 2, 1996, from Congressman Daniel Schaefer. This report presents the results of the fourth in a series of reviews addressing the issues forwarded by the Congressman. Our review included interviews with selected MSHA personnel and analysis of procurement files, logs, contracts, and related documentation at MSHA's Beckley, WV; Denver, CO and Arlington, VA procurement divisions. Our review was conducted in accordance with the Quality Standards for Inspections published by the President's Council on Integrity and Efficiency.

II. Review Results

A. Building Construction

Our objectives in evaluating the issues surrounding building construction projects previously initiated by MSHA in Bruceton, PA and currently underway in Trideiphia and Beckley, WV, were to determine whether these procurement actions complied with existing Federal budget and procurement laws, regulations and guidance. The concerns that MSHA had not obtained required congressional authorizations for the projects, raised in the correspondence forwarded to us, were based upon inaccurate or incomplete information. No indications of other procurement compliance issues pertaining to the construction projects came to our attention during this review.

Our review of MSHA's procurement records regarding construction at the Bruceton Safety and Health Technology Center for the past ten years did not confirm the congressional constituent's contention that *new building construction in the early 1990's was incremented into three contracts totaling approximately \$1.2 million*. Analysis of the documentation from MSHA's official contract files and logs, disclosed that a contract for \$409,000 was awarded in September 1987 to construct a building (#38) to house MSHA employees at the Bureau of Mines complex. Further analysis, as well as interviews with MSHA officials, did not support the complainant's position that when the *building was expanded (roughly doubling the floor space) in 1992, at least three additional contracts, each under \$500,000, were awarded to complete construction*. Our review determined that two contracts totaling \$547,200 were let in July 1993 to construct an addition to Building #38.

While the correspondence states that *each contract was let for less than \$500,000 to stay below the congressionally mandated limit of one-half million dollars and avoid requiring congressional approval*, in fact, our review confirmed that the threshold the General Services Administration (GSA) administers had been raised from \$500,000 to \$1.5 million in 1988. Under the US Code, Title 40, Public Buildings, Property, and Works; Chapter 12, Construction, Alteration, and Acquisition of Public Buildings, congressional approval is required for such proposed projects that involve a total expenditure in excess of \$1.5 million.

Our review did confirm the constituent's information that *Commerce Business Daily (CBD) notices would appear in the very near future* soliciting bids for construction projects at MSHA's Beckley and Tridelphia, WV sites. However, the complainant's position that these *additional incremented construction contracts are expected to be in violation of the \$500,000 new*

facility funding limit, was not substantiated. Analysis of the official contract files and logs identified five notices in the CBD for construction contracts involving those two sites. One of the five projects applied to the Beckley facilities and entailed furnishing and installing chiller towers on a building; a contract for \$308,453 was let on September 27, 1996 for this purpose. The remaining four CED notices and subsequent contracts awarded on September 30, 1996 pertained to Tridelphia projects and involved the following:

1. construction of a new maintenance building on the MSHA property (\$186,195)
2. repair/maintenance to Building I - install paving and french drains (\$294,900)
3. repair/maintenance to Building II - repair and/or install replacement metal siding, roof system and windows (\$375,000)
4. construct a new second floor to Building II - including an elevator, all interior office partitioning, ceilings, doors, electric, HVAC, lighting, etc. (\$446,000)

The four Tridelphia contracts were awarded for distinct construction projects which neither individually, nor in the aggregate, exceed GSA's \$1.5 million dollar threshold cited above. Further, these four contracts were placed on hold pending GAO and OIG review of concerns raised in the correspondence forwarded by Congressman Schaefer. MSHA received congressional approval to proceed with the first three Trideiphia contracts in December 1996 and the fourth in February 1997.

B. Fragmentation of Procurements

Our objectives in evaluating the concerns raised about *widespread fragmentation of procurement actions in some segments of the Agency*, were to examine MSHA's procurement procedures for compliance with applicable laws and regulations prohibiting incremental procurement actions. As a result of our review, we concluded that there was no evidence of systemic fragmentation of procurement actions.

Fragmentation or incremental procurement actions refers to the practice of breaking a procurement into several purchases that are less than the regulatory threshold merely to permit use of simplified acquisition procedures or to avoid any other procurement requirements. The Federal Acquisition Streamlining Act of 1994 defines the Simplified Acquisition Threshold (SAT) as

\$100,000 (\$50,000 without interim certification for the Federal Acquisition Computer Network, the preferred means for conducting all purchases under the SAT). Regulations further provide that simplified acquisition procedures shall not be used in the acquisition of supplies and services initially estimated to exceed the SAT, even though resulting awards do not exceed the threshold. Prior to 1994, the threshold for procurements defined as small purchases permitting a simplified process was \$25,000.

We interviewed MSHA procurement officials, examined information from the agency's Procurement Information Tracking System (PITS) and reviewed procurement logs and files, as well as Federal Acquisition Regulations. In addition, we reviewed procurement transaction data from the Department of Labor Accounting and Related Systems (DOLAR\$) for a six-month period in 1996. Transactions that on the surface gave the appearance of potential fragmentation were identified and a further analysis of those specific contract files was conducted. This review did not confirm the complainant's contention; in fact, of the procurement actions examined, no fragmentation was identified.

Consistent with MSHA's Delegated Procurement Authority for both purchase orders and contracts, the agency is subject to periodic contract management reviews by the Office of the Assistant Secretary for Administration and Management (OASAM), including an examination of policies, practices and procedures for compliance with FAR and DOL guidelines. OASAM conducted reviews in June 1993 and March 1995, encompassing both MSHA's large contracts and small purchases nationwide. While fragmentation was identified along with a variety of other deficiencies in 1993, OASAM officials stated that their 1995 follow-up review found all previously cited findings had been corrected. In addition, the OASAM reviewers indicated that contract documentation revealed substantial improvements had been made in MSHA's procurement procedures.

In summary, our review determined that the concerns raised in the correspondence forwarded by Congressman Schaefer regarding the circumvention of building construction thresholds and widespread fragmentation of procurements were without foundation. Since no issues requiring corrective action were identified during this review, this memorandum report is considered closed upon issuance and no response is required.

We appreciate the cooperation received from MSHA officials during the course of this review. If you have any questions concerning this report, please contact Veronica M. Campbell at

(202) 219-8446, ext. 143.