

U.S. Department of Labor

Office of Inspector General—Office of Audit

**EMPLOYMENT AND
TRAINING ADMINISTRATION**



DEPARTMENTAL INVOLVEMENT IN CHINATOWN MANPOWER PROJECT, INC., CONTRIBUTED TO CIRCUMVENTION OF PROCUREMENT RULES

Date Issued: August 25, 2005

Report Number: 02-05-202-01-001

**U.S. Department of Labor
Office of Inspector General
Office of Audit**

BRIEFLY...

Highlights of Report Number: 02-05-202-01-001, to the Deputy Secretary, U.S. Department of Labor. August 24, 2005

WHY READ THE REPORT

Chinatown Manpower Project, Inc. (CMP) received a \$1.1 million contract under a \$25 million Workforce Investment Act National Emergency Grant (NEG) that the U. S. Department of Labor (Department) awarded the New York State Department of Labor (NYS DOL) after the September 11, 2001, attack on the World Trade Center (WTC). The purpose of the NEG was to provide core, intensive, and training services for workers who lost their jobs as a result of the WTC attack. This report discusses issues surrounding the Department's involvement in the selection of CMP subcontractors, which contributed to the circumvention of procurement rules and regulations.

WHY OIG DID THE AUDIT

The Office of Inspector General (OIG) initiated an audit in response to a hotline complaint referred to us by the Office of the Secretary of Labor alleging misuse of departmental funds by CMP. During the audit, we became aware of potential irregularities in how CMP's subcontractors were identified to receive funds. The OIG expanded the hotline audit to include the propriety of the award of NEG funds to CMP and its subcontractors, which is the subject of this report.

READ THE FULL REPORT

To view the report, including the scope, methodology, and full agency response, go to: <http://www.oig.dol.gov/publicreports/oa/2005/02-05-202-01-001.pdf>.

August 2005

DEPARTMENTAL INVOLVEMENT IN CHINATOWN MANPOWER PROJECT, INC., CONTRIBUTED TO CIRCUMVENTION OF PROCUREMENT RULES

WHAT OIG FOUND

The Department was substantially involved in arrangements to provide funding for CMP's subcontractors. The Department's actions led NYSDOL to believe the Department had sanctioned specific organizations to receive the \$1 million earmarked for Chinatown, which in turn led CMP to enter into subcontracts with those organizations without full and open competition. Finally, the Regional Representative in New York created an appearance of favoritism because she had long-term friendships with executives of two of the selected organizations.

We believe that the Department's involvement was prompted by good intentions: the need to respond to the economic and psychological impact of September 11, 2001. However, we concluded that the Department placed itself in a situation of having contributed to actions taken by NYSDOL and CMP that ultimately were inconsistent with Federal procurement rules and regulations for which the Department is responsible for ensuring compliance. We also concluded there was inadequate delineation of the Department's responsibilities and control over planning and carrying out the Chinatown response.

WHAT OIG RECOMMENDED

We recommended that appropriate action be taken to ensure that (1) all departmental employees fully comply with and promote the spirit and letter of Federal procurement and ethics laws and regulations; (2) the roles and responsibilities of personnel in the Office of the Secretary, the Regional Representatives, the Employment and Training Administration, and other key personnel are clearly delineated for grant awards, especially in emergency situations; and (3) a record is maintained of decisions and discussions that lead to actions by departmental officials that affect how and to whom grant funds are distributed.

The Deputy Secretary concurred with the recommendations and provided information about actions taken and planned to address the recommendations. Based on the information provided, we resolved recommendation 1 and closed recommendations 2 and 3.

Table of Contents

	PAGE
EXECUTIVE SUMMARY	3
ASSISTANT INSPECTOR GENERAL'S REPORT	7
The Department of Labor's involvement in arrangements to provide funding to Chinatown Manpower Project, Inc.'s subcontractors contributed to the circumvention of Federal and state procurement regulation.....	7
Appendices	17
A. Background	19
B. Objective, Scope, Methodology, and Criteria	21
C. Acronyms and Abbreviations	25
D. Agency Response	27

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Executive Summary

We initiated an audit in response to a hotline complaint referred to us by the Office of the Secretary of Labor alleging misuse of the U. S. Department of Labor (Department) funds by Chinatown Manpower Project, Inc. (CMP). The allegations included delays in paying teachers, employment assistance not being provided, and teachers not being present at or qualified to teach English as a Second Language classes. We found the allegations to be without merit. However, during the audit, we became aware of potential irregularities in how CMP's subcontractors were identified to receive funds. The OIG expanded the hotline audit to include the propriety of the award of NEG funds to the CMP and its subcontractors, which is the subject of this report. The hotline allegations, and additional grant issues that came to our attention during the audit, will be addressed in a separate report to the Assistant Secretary for Employment and Training.

CMP received a \$1.1 million contract under a \$25 million Workforce Investment Act (WIA) National Emergency Grant (NEG) that the Department awarded the New York State Department of Labor (NYSDOL) after the September 11, 2001, attack on the World Trade Center.

Results

We found that the Department was substantially involved in arrangements to provide funding for subcontractors under CMP's contract from NYSDOL. Specifically, departmental officials identified service providers in Chinatown, recommended service providers to NYSDOL, and notified the Chinese Christian Herald Crusade (Herald), the Chinese-American Planning Council (Council), and the Asian American Business Development Center (AABDC)¹ of their selection. This level of involvement, which was not evident at any of the other 17 New York State NEG subcontractors and was uncommon at a level two tiers below the Department's prime grant with the State, was the basis for actions by NYSDOL and CMP to award funds to certain subrecipients.

Specifically, the Department's actions led NYSDOL to believe the Department had sanctioned specific organizations to receive the \$1 million earmarked for Chinatown. In addition, CMP believed that the Department had designated specific groups to participate under the NEG grant to NYSDOL; therefore, CMP entered into subcontracts with those organizations without full and open competition nor proper justification of the use of a noncompetitive process, contrary to Federal procurement requirements contained in 29 CFR 95.43. Also, NYSDOL bypassed 29 CFR 97.36, which required that New York comply with state procurement requirements. Finally, the Regional Representative in New York - who participated in researching potential service

¹ AABDC opted not to participate in the grant.

providers, provided contact information for two of the providers, and notified the service providers they had been selected to receive an NEG award - created an appearance of favoritism because she had long-term friendships with executives of two of the selected organizations.

We believe that the Department's involvement was prompted by good intentions: the need to respond to the enormous economic and psychological impact the events of September 11, 2001, had on Chinatown and New York City. However, we concluded that the Department placed itself in a situation of having contributed to actions taken by NYSDOL and CMP that ultimately were inconsistent with Federal procurement rules and regulations for which the Department is responsible for ensuring compliance. We also concluded there was inadequate delineation of the Department's responsibilities and control over planning and carrying out the Chinatown response. Responsibility was divided among the Office of the Secretary, the Regional Representative, the Assistant Secretary for Employment and Training (ETA Assistant Secretary), and staff.

Recommendations

We recommend that appropriate action be taken to ensure that:

1. all departmental employees fully comply with and promote the spirit and letter of Federal procurement and ethics laws and regulations, including but not limited to acting impartially, recusing themselves where there is a factual or apparent conflict of interest, and abstaining from the appearance of giving preferential treatment to any organization or individual;
2. the roles and responsibilities of personnel in the Office of the Secretary, the Regional Representatives, the Employment and Training Administration, and other key personnel are clearly delineated for grant awards, especially in emergency situations; and
3. a record is maintained of decisions and discussions that lead to actions by departmental officials that affect how and to whom grant funds are distributed.

Agency Response

The Deputy Secretary provided a written response on August 8, 2005, which concurred with the recommendations of the OIG and provided information about actions taken and planned to address the recommendations. His response in its entirety is attached as Appendix D.

OIG Conclusion

The Department's written response included a plan to provide specialized training to regional appointees. This is an excellent idea and will address a significant concern raised in our report. The actions that led to the contract award problems with the NEG, however, were not confined solely to the regional appointee. Therefore, the Deputy Secretary subsequently agreed to provide such training to all Department employees involved either directly or indirectly in procurement. Based on the written response and subsequent agreement, recommendation 1 is resolved. The recommendation will be closed when all training is completed.

Based on information and documentation provided of actions already taken, recommendations 2 and 3 are resolved and closed.

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U.S. Department of Labor

Office of Inspector General
Washington, DC 20210



Assistant Inspector General's Report

The Honorable Elaine Chao
Secretary of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

We initiated an audit in response to a hotline complaint referred to us by the Office of the Secretary of Labor alleging misuse of departmental funds by Chinatown Manpower Project, Inc. (CMP). CMP received a \$1.1 million contract under a \$25 million Workforce Investment Act (WIA) National Emergency Grant (NEG) that the Department awarded the New York State Department of Labor (NYSDOL) after the September 11, 2001, attack on the World Trade Center. During the audit of CMP, we became aware of issues in the process used on how the Chinese American Planning Council (Council) and the Chinese Christian Herald Crusade (Herald) were selected as CMP's subcontractors. We expanded the audit to determine what involvement the Department had in the selection of CMP's subcontractors. Our results with respect to the expanded scope are the subject of this report. The results of our audit of the original hotline allegations and other issues will be addressed in a separate report to the Assistant Secretary for Employment and Training (ETA Assistant Secretary).

Objective

What was the Department's involvement in the selection of CMP's subcontractors?

Finding - The Department of Labor's involvement in arrangements to provide funding to Chinatown Manpower Project, Inc.'s subcontractors contributed to the circumvention of Federal and state procurement rules and regulations

We found that the Department was substantially involved in arrangements to provide funding for subcontractors under CMP's contract from NYSDOL. The Department's involvement led NYSDOL and especially CMP officials to believe that the Department had sanctioned specific organizations to receive the \$1 million earmarked for Chinatown. As a result, CMP entered into certain subcontracts without full and open competition or properly justify the use of a noncompetitive process contrary to 29 CFR 95.43 requirements, and NYSDOL avoided state procurement guidelines, which in this case required fair and open competition and bypassed 29 CFR 97.36, requiring New York to comply with state and local laws. Further, the Regional Representative in New

York – who participated in researching potential service providers, provided contact information for two of them, and notified the service providers they had been selected to receive an NEG award – created an appearance of favoritism because she had long-term friendships with executives of two of the organizations originally selected, one of which received an award.

We believe that the Department’s proactive participation was prompted by good intentions; however, we concluded that the Department put itself in a situation of having contributed to actions taken by NYSDOL and CMP that ultimately were inconsistent with Federal procurement rules and regulations for which the Department is responsible for ensuring compliance. We also concluded there was inadequate delineation of the Department’s responsibilities and control over planning and carrying out the Chinatown response.

CMP Subcontractors

CMP’s contract listed four subcontractors. As a result of contacts from departmental and NYSDOL officials, CMP agreed to act as the fiscal conduit to the Chinese American Planning Council (Council – \$298,583) and the Chinese Christian Herald Crusade (Herald – \$148,385). In addition, CMP previously selected the New York Urban League (NYUL) without competition as a subcontractor based on NYUL’s experience in serving dislocated workers. A fourth subcontractor, the American Beauty School, was selected by CMP from an official list of New York approved training providers.

The Council, whose mission is to improve the quality of life of Chinese-Americans by providing services, skills, and resources, was a competitor of CMP. The Herald, whose mission is to lead Chinese Americans to Christ through community services and evangelical efforts, had some experience in providing English as a Second Language training and legal services but no experience in either serving dislocated workers or administering Federal programs.

The Department Was Involved in Identifying Service Providers

The Department awarded a \$25 million NEG to NYSDOL to assist workers dislocated as a result of the September 11, terrorist attack on the World Trade Center. In a speech on December 1, 2001, at the Chinese Consolidated Benevolent Association, the Secretary announced that she was providing NYSDOL \$1 million to assist in Chinatown’s recovery efforts, and that she had charged staff in her office with making sure the grant money reached the people who needed it most. As a result of the Secretary’s commitment, officials in the Department of Labor became involved in identifying service providers, which was unprecedented, for the Chinatown project. The Department’s interest was heightened when it became apparent that CMP did not have the capacity to fulfill the Secretary’s \$1 million commitment to Chinatown and that CMP was the only service provider in Chinatown being considered by NYSDOL. CMP was selected by NYSDOL because NYSDOL was

only considering organizations on an approved list of dislocated worker service providers.

Officials from the Department became involved. Although there was a lack of documentation of internal discussions and a need to rely on sometimes-conflicting information, it is clear that the Department's Office of the Secretary and the Office of Congressional and Intergovernmental Affairs identified additional organizations providing services in Chinatown. Staff from these offices researched community-based organizations within Chinatown. Departmental officials held meetings to discuss how to best assist New York in the wake of September 11, including how to assist Chinatown and what local organizations could potentially be tapped for that purpose. Attendees at such meetings included the Secretary, her Chief of Staff, the ETA Assistant Secretary, Counselor to the Secretary, and by phone the Regional Representative.

Although no one we interviewed who attended the meetings could recall the specifics of the meetings or their exact number, there was a general recollection that there were several meetings and that they involved the Department's response to the effects of the September 11 attack. At our February 15, 2005, briefing, the Secretary indicated she recalled the meetings as being primarily about plans for her visit to New York, although she did recall discussing whether the Department could provide money directly to a service provider and that CMP was specifically mentioned, but not the other entities. The Secretary also stated that no one, including the Regional Representative in New York, was instructed to direct funds to any specific entities, and that she expected all departmental staff to act in accordance with applicable requirements and was disappointed to the extent this had not been the case.

While it remains unclear how it came to pass, the Regional Representative notified the Herald, Council, and the Asian American Business Development Center (AABDC)² of the NEG award, and also at the request of NYSDOL provided contact information for the Herald and AABDC in order for NYSDOL to convene a meeting, in which the Regional Representative attended, to discuss CMP's role as the fiscal conduit and the other organizations understanding of the WIA grant process. This level of departmental involvement was not evident with any of the other 17 New York State NEG subcontractors.

We also concluded there was inadequate delineation of the departmental responsibilities and control over planning and carrying out the Chinatown response. Responsibility was divided among the Office of the Secretary, the Regional Representative, the ETA Assistant Secretary, and staff. The ETA Assistant Secretary stated in an interview that the Department's lead responsibility on the project was not clearly delineated among ETA, the Regional Representative, and the Secretary's staff. Both the ETA Assistant Secretary and the Regional Representative had contact with NYSDOL regarding the NEG. Also, there is no record of topics discussed or decisions made at the departmental level with respect to the Chinatown service providers. As a

² AABDC opted not to participate in the grant.

result, there was no clear accountability, and recollections of departmental executives and staff had to be relied upon to attempt to explain how the names of the organizations surfaced and were put forward as potential service providers.

NYSDOL and CMP Believed the Department Sanctioned Specific Organizations to Receive Funding

NYSDOL did not award contracts to the Herald, Council, and AABDC directly because, unlike CMP, they were not on the NYSDOL approved list of dislocated worker service providers, who, according to NYSDOL officials, had previously participated in a competitive process.³ Therefore, in order to ensure

more dislocated workers in Chinatown could be helped, NYSDOL, with departmental guidance, requested that CMP award subcontracts to the Herald, Council and AABDC. These organizations previously had been identified by personnel from the Secretary's Office and the Office of Congressional and Intergovernmental Affairs as ones to provide services to the people of Chinatown. The ETA Assistant Secretary indicated that the Secretary's Regional Representative and a former staff assistant in the Office of the Secretary made the decision to use CMP as a fiscal agent and make the other service providers subcontractors to CMP.

The Department's involvement as discussed above led NYSDOL and especially CMP officials to believe that the Department had sanctioned specific organizations to receive the \$1 million earmarked for Chinatown. A NYSDOL official stated that CMP was accommodating the wishes as expressed by the Secretary through press releases, other means, and the Regional Representative, to be able to move funds to certain Asian organizations that were positioned to help provide employment and training services in Chinatown. In our opinion, this contributed to CMP's failure to follow procurement regulations that at a minimum require a subrecipient to make the determination as to whether or not a competitive process was feasible. Minutes from CMP's December 11, 2001, Board of Directors' meeting reflects CMP's understanding of its role as the "fiscal conduit" in order to "funnel" money to the Herald and the Council:

Secretary Chao has designated four agencies as recipients of the fund. However, CMP is the only agency among the four who has a current contract with NYSDOL and therefore, the funds could easily be channeled to CMP through a budget modification. Since the other agencies do not have any existing contractual relationship with NYSDOL, CMP was asked by NYSDOL to be the fiscal conduit to the other agencies in order to funnel the money to them. The Board approved CMP as the fiscal conduit for the other three agencies, namely the Chinese American Planning Council, Asian American Business Development Center, and the Chinese Christian Herald Crusade.

³ The use of this list was approved by the New York State Comptroller.

By implementing NYSDOL's request, CMP violated 29 CFR 95.43 which provides for, to the maximum extent practical, open and free competition in the award of departmental funds; where an award is made without competition, the awarding organization, upon request, must make available requests for proposals or invitations for bids, and evaluations of the technical competence and cost estimates of potential subcontractors. There was no attempt to solicit competition, nor perform technical and cost analyses,⁴ by CMP. By implementing USDOL guidance making CMP the fiscal agent, NYSDOL avoided state procurement guidelines, which in this case required fair and open competition⁵ and bypassed 29 CFR 97.36, requiring New York to comply with state and local laws.

According to officials of the Employment and Training Administration (ETA) and the Office of the Solicitor, neither Congress nor the Department had established special procurement procedures at the time the NEG was awarded to NYSDOL that would have given authority to the Department, NYSDOL, or CMP to depart from Federal and state procurement rules and regulations. A NYSDOL official stated that concerns might have been expressed to the ETA Assistant Secretary about NYSDOL being placed in a difficult situation by the Department. The ETA Assistant Secretary stated that no concerns had been raised with her, but that, even if the Department had recommended subcontractors, NYSDOL was free to accept or reject those recommendations. At the request of CMP, NYSDOL convened a meeting with the proposed subcontractors, the Regional Representative, and CMP to discuss the contract awards and administrative logistics.

**Departmental
Actions Lacked
Impartiality and
Were Inconsistent
with WIA**

While NYSDOL can be faulted for not ensuring that CMP adhered to Federal and state procurement requirements, the Department should have been cognizant of the impact its real or perceived influence had in this situation. The Regional Representative's involvement at the subcontract level demonstrated a lack of impartiality. Further, the Department's involvement was inconsistent with WIA's guiding principle of a

strong local role in planning WIA programs, and also the Federal Grant and Cooperative Agreement Act of 1977 (P. L. 95-224) as implemented in Department of Labor Manual Series 2-Administration, Chapter 800, Sections 854 and 856, which define the relationships between the parties involved in grants and cooperative agreements. As a result, the Department put itself in a situation of having contributed to actions taken by NYSDOL and CMP that ultimately were inconsistent with Federal procurement rules and regulations for which the Department is responsible for ensuring compliance.

⁴ NYSDOL performed cost analysis. However, there was not sufficient documentation to determine if each element of cost was allowable, allocable and reasonable.

⁵ NY State Procurement Guidelines in certain cases does allow for a noncompetitive process. NYSDOL did not exercise these provisions which would have required the approval of the agency head or designee and the agency to make all reasonable attempts to solicit at least three oral competitive bids and written confirmation of each solicitation to be furnished within a reasonable time and maintained as an official record. (See Criteria Section in Appendix B.)

Lack of Impartiality

The actions of the Regional Representative represented, at a minimum, a lack of impartiality contrary to 5 CFR 2635.101(b)(8) because she had long-term friendships with executives of two of the organizations that were notified of their NEG award. Although she initially stated she had no knowledge of the organizations before NYSDOL selected them, she later told us she had a personal, long-term friendship with an executive of Herald. The Herald's former Program Director stated that the Regional Representative was an old time friend. Further, the President of AABDC stated that he and the Regional Representative were friends since college.

The Regional Representative played a major role in identifying the organizations, providing contact information for the organizations as requested by NYSDOL, and notifying the organizations of their awards. The Regional Representative emphasized the direct involvement of the Department in a May 2002 speech before the Asian American Leadership Conference. She stated:

In [the] process of earmarking funds for Chinatown, we have looked for groups that have not previously received any money, but have traditionally been providing services in the community, and have been doing good work. In that process the Chinese Christian [Herald] Crusade is one of them. I'm happy to share a great experience – that in just two weeks of working with a mentor, they were able to write up a proposal and to effectively receive, I believe, over \$200,000 in grants for an employment training service targeting health aides.

In an interview, the Regional Representative stated that her use of the word “we” in the above quote was a reference to NYSDOL; however, the Regional Representative was at the time, and continues to be, an employee of the U.S. Department of Labor. Also, one departmental official, then-Counselor to the Secretary, stated that he expressed concerns directly to the Regional Representative about the propriety of awarding sole source contracts to friends with no history of providing employment services. Yet, the organizations were not withdrawn from consideration, and the Regional Representative provided NYSDOL contact information for the Herald and AABDC.

We believe the Regional Representative's promotion of the Herald and AABDC to receive NEG funds, and her public statements depicting the role Department officials played in the subawards, created the appearance of favoritism and left the Department vulnerable to accusations that the organizations received preferential treatment. We also believe experience is crucial, especially during a national emergency. This is especially true for organizations with no prior histories of serving dislocated workers and administering Federal programs.

Inconsistency with WIA

The Department's participation at the subcontractor level also was inconsistent with a guiding principle of WIA that gives states, local boards, and the private sector stronger roles in program planning. The Administrator, ETA Office of National Response, stated that ETA never got involved in the selection of subcontractors in any grant.

Inconsistency with P.L. 95-224

The Department's actions were inconsistent with P.L. 95-224 that defines the role of the Federal agency in a grant or cooperative agreement. In accordance with P.L. 95-224, a grant agreement is the legal instrument used when no substantial involvement is anticipated and a cooperative agreement is the legal instrument used when substantial involvement is anticipated. National Emergency Grants are legal grant instruments, establishing the Department's intention not to have substantial involvement beyond the recipient level. In this situation, the Department's involvement not only exceeded its stewardship responsibilities, but superseded the responsibilities of the recipient and subrecipient.

The Council and Herald Functioned Separately Versus Working with CMP as Subcontractors

Reflecting both its understanding of its role of fiscal conduit to funnel money to the Herald and the Council, and its inexperience with subcontractors, CMP acted solely as fiscal agent and did not properly oversee the work of the Herald and Council. A May 2003 report by Public Private Ventures (PPV), which ETA commissioned to evaluate the effectiveness of the NEG awarded to

CMP and provide recommendations on how NEGs could be structured to help communities facing similar challenges in the future, found that the Council and the Herald were functioning as separate organizations, serving their own independent purposes versus working with CMP as subcontractors. Further, PPV stated that there was little coordination between CMP and its subcontractors, and that more coordination could have improved employment outcomes. In its report, PPV wrote:

There was little coordination among the three grantees with respect to the services provided under the NEG. While CMP was the primary contractor, its principal relationship to its subcontractors was to collect data from them. CMP took an administrative fee from the grants to its subcontractors for this work. Each program was responsible for its own intake process and for designing its own program in accordance with the requirements of the NEG.

The only meeting that occurred among the Chinatown grantees was immediately after the grant was awarded. The purpose was to discuss the requirements of the contract and to attempt to coordinate services. After this initial meeting, contact among the three organizations was limited to

telephone calls regarding data collection issues. The lack of communication posed a particular challenge for CCHC [Herald], which was new to the workforce system and would have benefited from guidance on how to implement an effective program. CMP and CPC [Council] were familiar with the WIA system and accustomed to providing workforce development services.

. . . [M]ore coordinated services could have also had a positive impact on job placement outcomes because organizations would have all been trying to place participants in the same occupation.

Based on our interviews and review of e-mails, meeting minutes, and other documentation, we concluded that the Department's involvement was prompted by good intentions: the need to respond to the enormous economic and psychological impact the events of September 11, 2001, had on Chinatown and New York City. However, we concluded that the Department put itself in a situation of having contributed to actions taken by NYSDOL and CMP that ultimately were inconsistent with Federal procurement rules and regulations for which the Department is responsible for ensuring compliance. We also concluded there was inadequate delineation of departmental responsibilities and control over planning and carrying out the Chinatown response.

Recommendations

We recommend that appropriate action be taken to ensure that:

1. all departmental employees fully comply with and promote the spirit and letter of Federal procurement and ethics laws and regulations, including but not limited to acting impartially, recuse themselves where there is a factual or apparent conflict of interest, and abstaining from the appearance of giving preferential treatment to any organization or individual;
2. the roles and responsibilities of personnel in the Office of the Secretary, the Regional Representatives, ETA, and other key personnel are clearly delineated for grant awards, especially in emergency situations; and
3. a record is maintained of decisions and discussions that lead to actions by departmental officials that affect how and to whom grant funds are distributed.

Agency Response

In response to recommendation 1, the Deputy Secretary stated:

Although these events were likely shaped by the unprecedented circumstances in which they took place, it is common for regional staff to be closer to, and more connected with, potential grantees and other beneficiaries of departmental programs. Therefore, we will provide specialized training in Federal procurement and ethics rules to the Department's regional appointees, to ensure that Federal procurement rules and other safeguards on the grant-making process are always carefully observed, even in emergency situations.

In response to recommendation 2, the Deputy Secretary stated:

As you know, the Department's Employment and Training Administration (ETA) follows detailed, written procedures for each of its grants (including the National Emergency Grant to New York State), and continuously upgrades these safeguards to strengthen the integrity of the grant-making process. After reviewing the challenges of responding to September 11, ETA implemented new procedures and controls that address the OIG's recommendation. In April 2003, ETA issued ET Order 1-03, which clarifies the roles and responsibilities within ETA for grant administration, including new Grant Officer responsibilities for Regional Administrators. In February 2005, ETA also issued internal guidance to define roles and responsibilities for Emergency Grant (NEG) awards, covering all phases of the administrative process.

In response to recommendation 3, the Deputy Secretary stated:

Effective record-keeping enhances the transparency of the grant-making process and reduces the potential for grant decisions to be influenced by factors and individuals outside the designated procedures and criteria. ETA's February 2005 internal guidance substantially enhances record-keeping procedures related to grant administration, in furtherance of these objectives. Nearly every aspect of ETA's grant-making process is recorded, much of it through e-communications. . . . These enhanced record-keeping measures ensure that the roles and actions of Department officials involved in the grant-making process are fully transparent. These measures also reinforce the principle that no official should take actions intended to

influence the award or distribution of grant funds that are external to this systematized, transparent process.

OIG Conclusion

The Department's written response included a plan to provide specialized training to regional appointees. This is an excellent idea and will address a significant concern raised in our report. The actions that led to the contract award problems with the NEG, however, were not confined solely to the regional appointee. Therefore, the Deputy Secretary subsequently agreed to provide such training to all Department employees involved either directly or indirectly in procurement. Based on the written response and subsequent agreement, recommendation 1 is resolved. The recommendation will be closed when all training is completed.

Based on information and documentation provided of actions already taken, recommendations 2 and 3 are resolved and closed.



Elliot P. Lewis
February 15, 2005

Appendices

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BACKGROUND

CMP was founded in 1972, as a nonprofit community-based organization in response to vocational training needs of the growing Asian immigrant and refugee community. Its mission is to provide vocational training, employment services, educational programs, and economic development programs to disadvantaged Asian Americans and the refugee community. CMP's goal is to help these groups acquire the necessary skills and resources needed to become economically self-sufficient and contributing members of mainstream society. CMP trains over 1,600 individuals a year through vocational programs.

On September 13, 2001, ETA issued Master Agreement Number ER-11796-01-60 for \$25 million to NYSDOL for funds under the NEG program under WIA, Section 173. Initially, the grant was to assist workers who were dislocated by the September 11, attack by providing temporary jobs to assist in the cleanup, repair and reconstruction of public and private nonprofit property. On October 3, 2001, the grant was modified to provide core, intensive, and training services for workers who lost their jobs as a result of the World Trade Center (WTC) attack. The revision was necessary because the cleanup area was declared a crime scene, and due to the highly specialized nature of the investigations, temporary jobs near the WTC were prohibited at that time.

To expedite the selection of contractors, NYSDOL solicited the interest of New York City's (NYC) network of dislocated worker contractors to provide retraining and placement services. The Local Workforce Investment Areas (LWIA) had selected these contractors through NYC's competitive bid process. Of the 20 contractors in NYC's dislocated worker program, 14 contractors, including CMP, negotiated contracts with NYSDOL to provide services under the NEG. In addition, NYSDOL awarded contracts to four LWIAs outside of NYC.

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OBJECTIVE, SCOPE, METHODOLOGY, AND CRITERIA

Objective

Our objective was to determine what involvement the Department had in the selection of CMP's subcontractors.

Scope

We conducted our performance audit in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States, and included such tests as we considered necessary to satisfy the objectives of the audit. Our audit objectives did not require, and we did not perform, testing or assessment of internal controls or compliance with laws and regulations regarding the Department's overall grant process. Our review of controls and compliance were limited to the Department's involvement with the award NEG funds to CMP and its contractors. Our audit period was September 13, 2001, to February 14, 2002. Fieldwork was conducted in the Department from April 28, 2004, through February 15, 2005.

Methodology

We interviewed Department of Labor officials in the Office of the Secretary, the Office of Congressional and Intergovernmental Affairs, ETA, and the Office of the Solicitor, and reviewed relevant grants, contracts, meeting minutes, emails, and other documentation. In preparing this report, we also relied on interviews conducted and evidence obtained in conjunction with our audit of hotline allegations and other issues, the results of which will be separately reported to the ETA Assistant Secretary. For example, we interviewed officials from NYSDOL, CMP, the Herald, and the Council regarding the award of NEG funds to CMP and its subcontractors.

Criteria

Procurement

29 CFR 95.43 (Non- Profit Organizations)

Competition. All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements,

statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

29 CFR 95.44 (d) and (e) (Non-Profit Organizations)

Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources . . .

Recipients shall, on request, make available for the Federal awarding agency, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.

- (1) A recipient's procurement procedures or operation fails to comply with the procurement standards in the Federal awarding agency's implementation of this Circular.
- (2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently \$25,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

29 CFR 97.36

(a) States. When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will ensure that every purchase order or other contract includes any causes required by Federal statutes and executive orders and their implementing regulations.

NY State Procurement Guidelines, Section Four, G, Emergency Conditions

An Emergency is considered an urgent and unexpected requirement where health and public safety or conservation of public resources is at risk. An agency's failure to properly plan in advance which then results in a situation in which normal practices cannot be followed does not constitute an emergency.

Where an emergency exists, an agency may let procurement contracts without complying with formal competitive bidding requirements. Under such conditions, a waiver of the competitive bidding requirements must be approved by the agency head or a designee.

Under such conditions, the agency shall document in the Procurement Record each transaction entered as a result of the emergency situation, setting forth the nature of the emergency situation; the potential effect on the health, public safety, or the conservation of public resources; and a detailed description of the commodities, services and technology to be provided. The agency shall make all reasonable attempts to solicit at least three oral competitive bids and written confirmation of each solicitation shall be furnished within a reasonable time and maintained as an official record. Contracts entered into as a result of the emergency situation shall be for only the commodities, technology and/or services necessary to remedy or ameliorate the situation.

Impartiality

5 CFR 2635.101 (Basic Obligation of Public Service)

. . . (b) General principles. The following general principles apply to every employee and may form the basis for the standards contained in this part. Where a situation is not covered by the standards set forth in this part, employees shall apply the principles set forth in this section in determining whether their conduct is proper. . . . (8) Employees shall act impartially and not give preferential treatment to any private organization or individual.

Workforce Investment Act; Final Rules

20 CFR 652 et al. Section I.A WIA Principles

This new law embodies seven key principles. They are . . .

- Strong role for local workforce investment boards and the private sector, with local, business-led boards acting as "boards of directors," focusing on strategic planning, policy development and oversight of the local workforce investment system. Business and labor have an immediate and direct stake in the quality of the workforce investment system. Their active involvement is critical to the provision of essential data on what skills are in demand, what jobs are available, what career fields are expanding, and the identification and development of programs best meet local employer needs. Highly successful private industry councils under JTPA exhibit these characteristics now. Under WIA, this will become the norm.

- State and local flexibility. States and localities have increased flexibility, with significant authority reserved for the Governor and chief elected officials, to build on existing reforms in order to implement innovative and comprehensive workforce investment systems tailored to meet the particular needs of local and regional labor markets. . . .

Use of Contracts, Grants, and Cooperative Agreements

DLMS 2, Chapter 800, Section 854 (b)

The Department shall use a type of grant agreement as the legal instrument reflecting a relationship between DOL and a State, local government or other recipient whenever the principal purpose of the relationship is the transfer of money, property, services or anything of value to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute and no substantial involvement is anticipated between DOL and the State, local government or other recipient during performance of the contemplated activity. [Emphasis added.]

DLMS 2, Chapter 800, Section 856

Anticipated Substantial Involvement During Performance. The basic statutory criteria for distinguishing between grants and cooperative agreements is that for the latter, "substantial involvement is anticipated between the executive agency and the recipient during performance of the contemplated activity. . . anticipated departmental involvement during performance would exist and, depending on the circumstances, could be substantial, where the relationship includes, for example. . . (3) Agency review and approval of substantive provisions of proposed sub-grants or contracts. These would be provisions that go beyond existing policies on Federal review of grantee procurement standards and sole source procurement.

ACRONYMS AND ABBREVIATIONS

AABDC	Asian American Business Development Center
CFR	Code of Federal Regulations
CMP	Chinatown Manpower Project, Inc.
Council	Chinese-American Planning Council
Department	U. S. Department of Labor
ESL	English as a Second Language
ETA	Employment and Training Administration
Herald	Chinese Christian Herald Crusade
LWIA	Local Workforce Investment Area
NEG	National Emergency Grant
NYSDOL	New York State Department of Labor
NYUL	New York Urban League
OCIA	Office of Congressional and Intergovernmental Affairs
OIG	Office of Inspector General
OMB	Office of Management and Budget
OSEC	Office of the Secretary
WIA	Workforce Investment Act of 1998

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AGENCY RESPONSE TO DRAFT REPORT

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

August 8, 2005

The Honorable Gordon S. Heddell
Inspector General
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Mr. Heddell:

Thank you for the opportunity to comment on the Office of Inspector General's (OIG) audit report concerning the National Emergency Grant to New York State following the terrorist attacks of September 11, 2001. As you note, this audit was initiated in response to an anonymous complaint that was received by the Office of the Secretary and referred to your office for further review. The allegations in that complaint were determined to be without merit, but in the course of your audit, the OIG identified other concerns that are the principal subject of this report.

We concur with the recommendations of the OIG pursuant to this audit and appreciate the tremendous amount of work performed by the OIG staff in connection with this report.

Although the audit report identifies procedural and perceptual problems that need to be corrected – and in fact many already have been addressed – it also concludes that the actions taken by Department of Labor regional staff were “prompted by good intentions: the need to respond to the enormous economic and psychological impact the events of September 11, 2001, had on Chinatown and New York City.” All of us who served our nation during that time still can vividly recall the pervasive atmosphere of urgency, “can-do” improvisation, broad generosity, and concern for those who were suffering. All of us in government, including the Department of Labor, were faced with new challenges and problems that demanded immediate results – and generally, those results were delivered.

Nevertheless, departmental grants must be in compliance with Federal procurement and ethics rules at all times, and the audit report recommends appropriate action to ensure that this standard is fully upheld. Specifically, the report found that, because of certain staff actions in New York, “the Department placed itself in a situation of having contributed to actions taken by [the New York State Department of Labor] and [Chinatown Manpower, the grant contractor] that ultimately were inconsistent with Federal procurement rules and regulations for which the Department is responsible for ensuring compliance.” Although these events were likely shaped by the unprecedented circumstances in which they took place, it is common for regional staff to be closer to, and more connected with, potential grantees and other beneficiaries of departmental programs. Therefore, we will provide

The Honorable Gordon S. Heddell
August 8, 2005
Page Two

specialized training in Federal procurement and ethics rules to the Department's regional appointees, to ensure that Federal procurement rules and other safeguards on the grant-making process are always carefully observed, even in emergency situations.

The OIG audit report also recommends that the roles and responsibilities of personnel in various departmental offices be more clearly delineated with respect to the grant process, especially in emergency situations. As you know, the Department's Employment and Training Administration (ETA) follows detailed, written procedures for each of its grants (including the National Emergency Grant to New York State), and continuously upgrades these safeguards to strengthen the integrity of the grant-making process. After reviewing the challenges of responding to September 11, ETA implemented new procedures and controls that address the OIG's recommendation. In April 2003, ETA issued ET Order 1-03, which clarifies the roles and responsibilities within ETA for grant administration, including new Grant Officer responsibilities for Regional Administrators. In February 2005, ETA also issued internal guidance to define roles and responsibilities for National Emergency Grant (NEG) awards, covering all phases of the administrative process.

Under the revised procedures, ETA's Office of National Response (ONR) has principal authority to: develop policies and procedures for the NEG program; specify application submission requirements and application review guidelines; lead the evaluation of NEG requests; and – jointly with ETA's Office of Grants and Contracts Management (OGCM) – recommend NEG awards. NEG recommendations are communicated by memorandum, prepared by ONR, for review and decision by the Assistant Secretary for Employment and Training and the Secretary of Labor.

If a NEG application receives final approval, ONR is responsible for preparing a Grant Award Letter for the Grant Officer's signature that includes all approved provisions of the grant award, including the incremental funding amount and any criteria that must be met to obtain additional funding. ONR also transmits a Procurement Action Request to the Budget Office to initiate grant award actions. Only after all grant award steps are completed, *and entirely separate from the grant administration process*, notifications of NEG awards are made to the media and Members of Congress by the Office of Public Affairs and the Office of Congressional and Intergovernmental Affairs, respectively.

ETA's revised procedures make clear that ETA grant administration staff is responsible for interacting with prospective grantees and awardees in each phase of the process. This helps rectify any lack of clarity which may have contributed to the irregularities with the New York State NEG. Specialized career staff in ETA's regional offices are responsible for engaging with applicants during pre-submission, guiding them through the application process, and evaluating the quality of applications. Regional ETA career staff are also authorized to help NEG applicants develop potentially approvable applications and offer

The Honorable Gordon S. Heddell
August 8, 2005
Page Three

recommendations to ONR regarding incremental funding levels or special conditions to be included in any Decision Memorandum or Award Letter.

Grant administration integrity is further enhanced by separating the career regional office staff – who are authorized to participate in extensive pre-award interactions with grantees – from interactions with grantees in connection with the actual grant award. Once a grant application receives final approval, OGCM takes the lead role in notifying the applicant through a Grant Award letter, executing NEG agreements and any needed modifications with the grantee, and ensuring that proper official records are established. At every step throughout the process, all contacts with applicants and grantees during the grant-making process are conducted by trained, specialized career ETA staff.

Finally, the OIG audit report recommends more systematic record-keeping regarding all discussions and decisions by departmental officials that affect how, and to whom, grant funds are distributed. Effective record-keeping enhances the transparency of the grant-making process and reduces the potential for grant decisions to be influenced by factors and individuals outside the designated procedures and criteria. ETA's February 2005 internal guidance substantially enhances record-keeping procedures related to grant administration, in furtherance of these objectives. Nearly every aspect of ETA's grant-making process is recorded, much of it through e-communications. For example, ONR, OGCM and relevant regional offices of ETA all receive electronic notifications when grant applications are received, and have electronic access to the documents. If further contact with an applicant is required, to obtain added information or justification, ONR has sole authority to communicate with the applicant, by e-mail that is copied to both the relevant regional office and ETA's Grants Office. Applicants are required to submit any requested clarifications or information by electronically revising the grant application.

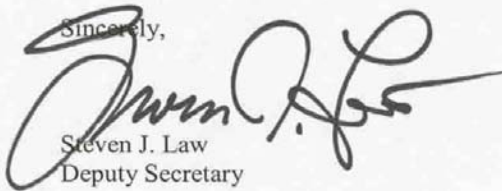
Once the application file is complete, ONR prepares a written funding recommendation and submits it to OGCM; and OGCM's concurrence is communicated back to ONR via e-mail. These views are then presented in a written decision memorandum that is sent to the Secretary, through OGCM and the Assistant Secretary of Employment and Training. Additional clearances of the decision memorandum by Office of the Secretary staff, prior to the Secretary's review and decision, are individually recorded and presented with the memorandum by the Executive Secretary. The Secretary's decision becomes part of the permanent record in connection with the grant; and signed approval of the memorandum by the Secretary constitutes authorization to execute a grant award to the applicant.

These enhanced record-keeping measures ensure that the roles and actions of Department officials involved in the grant-making process are fully transparent. These measures also reinforce the principle that no official should take actions intended to influence the award or distribution of grant funds that are external to this systematized, transparent process.

The Honorable Gordon S. Heddell
August 8, 2005
Page Four

Thank you for presenting a thorough report that offers constructive recommendations to improve the Department's grant-making process. Although the events that gave rise to this audit occurred at a time of great urgency and strain for our nation, we have been able to use the intervening period to make many of these improvements. We look forward to working with you to assess and enhance the effectiveness of these measures in the future.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven J. Law", written in a cursive style.

Steven J. Law
Deputy Secretary