



Department of Homeland Security Office of Inspector General

DHS Contracts With Low Wage Payments





Homeland
Security

November 5, 2009

MEMORANDUM FOR: The Honorable Elaine C. Duke
Under Secretary for Management
Richard L. Skinner
FROM: Richard L. Skinner
Inspector General
SUBJECT: *Letter Report: DHS Contracts With Low Wage Payments
(OIG-10-10)*

We initiated a review of Department of Homeland Security's contracts with a predominance of low-wage positions to determine whether the actual wages paid for subcontracted low-wage work complied with prevailing wage structures and the prime contractor's initial wage schedule. The current federal government contracting process, the Department of Labor's significant role and responsibilities regarding wages and labor management, and the absence of subcontractor information maintained in the Federal Procurement Data System Next Generation, the federal government's electronic database for specific contract data, affected our efforts to address this review's objectives. Therefore, we reported on the processes and procedures that cover contractor and subcontractor wage payment activities.

The report does not contain recommendations. DHS agreed with our report and we incorporated their technical comments.

Consistent with our responsibility under the *Inspector General Act, as amended*, we are providing copies of our report to appropriate congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. The report will be posted on our website.

Should you have any questions, please call me, or your staff may contact Carlton I. Mann, Assistant Inspector General for Inspections at (202) 254-4100.

Background

This report presents the results of our review, *DHS Contracts With Low Wage Payments*. We conducted this review to address concerns raised by Representative Bennie Thompson, Chairman, House of Representatives Committee on Homeland Security, regarding findings in the Center for American Progress December 2008 report, *Making Contracting Work for the United States – Government Spending Must Lead to Good Jobs*. That report concluded that in instances where contractors had subcontracted work in low-skilled occupation categories, the subcontractors had not followed the wage schedules the contractors had promised, despite prevailing wage requirements.

Results of Review

The following points summarize the results of contracting information that we identified during our review, which impacted our ability to determine whether actual wages paid for subcontracted low-wage work complied with prevailing wage structures and wage schedules.

- Government contracts for services such as food, guard, maintenance, and janitorial services are subject to wage, hour, benefits, safety, and health standards under the *McNamara-O’Hara Service Contract Act of 1965* (SCA), as amended.¹ Under such contracts, DHS and other federal departments are responsible for obtaining the appropriate wage determination(s) from the Department of Labor (DOL) and incorporating them into the solicitations and resulting contracts. DOL is responsible for not only establishing and maintaining prevailing wage determinations, but also for enforcing the payment of prevailing wage rates under Government contracts subject to the Service Contract Act.
- During our review, we learned that the DOL has not defined the term “low wage;” therefore, based on discussions with Chairman Thompson’s senior staff, we focused our contract selections on janitorial and food service occupations, which were services specifically identified in Chairman Thompson’s request. From FY 2006 to FY 2008, DHS maintained three service contracts for janitorial and food services; however, information in the contracting database did not indicate whether subcontractors performed the services under these contracts. Also, there is no indication whether the services provided under these contracts would be considered as low-wage services.

¹ 41 U.S.C. 351 et seq.

Overview of DHS' Contracting Structure

The Office of the Chief Procurement Officer (OCPO) supports and oversees DHS' acquisition program. Procurement offices within the following components are headed by a designated Head of Contracting Activity (HCA) responsible for managing procurement functions:

- Customs and Border Protection (CBP)
- Customs and Border Protection's Secure Border Initiative (CBP SBInet)
- Federal Emergency Management Agency (FEMA)
- Federal Law Enforcement Training Center (FLETC)
- Headquarters Office of Procurement Operations (OPO)
- Immigration and Customs Enforcement (ICE)
- Headquarters Office of Selective Acquisitions (OSA)
- Transportation Security Administration (TSA)
- U.S. Coast Guard (USCG)
- U.S. Secret Service (USSS)

An OCPO official explained that the chief procurement officer (CPO) has warrant authority over each HCA, which allows them to execute contracts on behalf of DHS.² To ensure accountability of HCAs' compliance with applicable acquisition and contracting rules, regulations, policies and procedures, the CPO maintains the ability to revoke an HCA's warrant authority. An OCPO official informed us that the CPO has never used this revocation authority, but has elevated issues to component heads.

OCPO's Oversight and Strategic Support (OSS) division is responsible for conducting oversight reviews to ensure compliance with applicable statutes, regulations, and DHS policies. OSS has contract pricing experts on staff to determine whether contract prices are negotiated with proper consideration of labor laws, including required wage determinations.

OCPO's Acquisition Policy and Legislation (APL) branch develops DHS contracting policies and processes to ensure compliance with DOL standards. Within APL, an agency labor advisor serves as the DOL liaison. At the component level, HCAs for CBP, FEMA, and OPO appointed a labor advisor to serve as point of contact for contract labor or wage issues.³ For those components that have not designated a labor advisor at the component level, any labor or wage issues are directed to the component's policy branch/division.

² Warrant authority is a delegated authorization to enter into contractual relationships and commit the government to the expenditure of funds.

³ Homeland Security Acquisition Manual (HSAM) 3022.101-170.

DOL Maintains Authority and Responsibility for Enforcing Service Contract Act Labor Requirements

DOL's Employment Standards Administration (ESA) mission is to enhance the welfare and protect the rights of American workers. ESA's Wage and Hour Division (WHD) enforces the prevailing wage requirements of the *Davis-Bacon Act*⁴ and the SCA applicable to federal contracts for construction and services.

Government contracts for services such as food, maintenance, janitorial, and guard and security services are subject to wage, hour, benefits, safety, and health standards under the SCA, as amended.⁵ The SCA requires DOL to set locally prevailing wage rates and other labor standards for employees of contractors furnishing services to the federal government.

WHD administers and enforces the SCA by providing compliance assistance and conducting investigations. WHD is the sole enforcement authority of the SCA, while DHS plays a supportive role, as shown in figure 1.

⁴ The *Davis-Bacon Act* and related acts apply to contractors and subcontractors performing on federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works. Under the *Davis-Bacon Act* and related acts, contractors and subcontractors must pay their laborers and mechanics employed under the contract no less than the locally prevailing wages and fringe benefits for corresponding work on similar projects in the area.

⁵ The SCA gives labor standards protection to employees working under contracts and subcontracts for federal agencies. It requires that, for contracts more than \$2,500, contractors pay their employees, at a minimum, the wage rates and fringe benefits that the DOL determined to be prevailing in the locality where the contracted work is performed.

Figure 1. Roles of WHD and DHS

| | Role of DHS |
|--|---|
| Serves as the enforcement authority of the SCA requirements for prevailing wages | Makes initial determination of whether contracted services are under the SCA, which requires a wage determination |
| Provides SCA compliance assistance to agencies in determining coverage | Receives SCA compliance assistance from DOL |
| Sets prevailing wage rates and wage determinations | Obtains wage determinations from DOL and includes them in solicitation for contract awards |
| Reviews inquiries and makes decisions on wage determination challenges | Directs wage determination inquiries to DOL |
| Determines whether contractors and subcontractors are in compliance with applicable requirements | Notifies contractors of requirements to advise workers of their rights |
| Processes wage complaints | Forwards wage complaints to DOL |
| Initiates and conducts wage investigations | Cooperates with DOL in investigations |
| Determines recoverable damages and provides agency notifications | Responds to DOL notifications |
| Debars or suspends contractors and notifies agencies | Reviews DOL list of excluded contractors prior to awarding contracts |

WHD conducts investigations of potential SCA violations. These investigations are primarily complaint-driven, but may also be initiated by WHD in response to DOL strategic plans or other agency initiatives. Contractors are required to provide notice to workers regarding their wages and benefits, and must post a WHD publication before contract performance begins. Federal agencies include specific clauses in contracts to inform the contractor of the labor standards requirements.⁶

Workers are the primary source of wage complaints to WHD, although contractors, subcontractors, agencies, or other interested parties may also file complaints. When an agency receives a wage complaint, it must forward the complaint to WHD on behalf of the complainant. Typically, a WHD investigation may include a review of wage determinations; adherence to applicable labor, safety, and health laws; benefits; and placement of required worker rights notices.

If WHD investigators determine that a prime contractor or subcontractor is in violation of wage payment standards, the investigators notify the contracting agency of the violation

⁶ Federal Acquisitions Regulations (FAR) 22.1018 and 52.222-41.

and the amount of underpayment. The contracting officer is required to withhold that amount from the prime contractor regardless of whether the prime contractor or the subcontractor committed the violation.⁷

DHS Does Not Maintain a Direct Relationship With Subcontractors

In federal government contractual relationships, labor laws apply to both the prime and subcontractor. The federal government maintains oversight responsibility for the prime contractor; however, the prime contractor assumes responsibility for subcontractor activities in support of the prime contract. This limits DHS' ability to ensure compliance with entities other than the prime contractor.⁸

The Defense Contract Audit Agency (DCAA) provides audit-related services for federal government contracts. Where a contractor has contracts with more than one Government agency, the Single Audit Act requires that only one set of Government auditors are permitted to conduct reviews of the contractor's books and records. That agency is generally DCAA. Even in those rare instances where DHS is the only Government agency that has contracts with a particular contractor business segment, DHS relies on DCAA to perform the audits of the contractor's books and records, because DCAA has the audit expertise to perform these reviews.

Wage Information for Contract Workers Is Absent From the Contract Database

The Federal Procurement Data System Next Generation (FPDS-NG) is the federal government's electronic database for specific contract data. FPDS-NG includes a field to indicate when a contract award requires a subcontracting plan; however, the requirement is only for subcontracts that are required in order to satisfy a specific socioeconomic goal, and does not include any other specific subcontract information. Additional data about subcontracts are contained in the Electronic Subcontract Reporting System (ESRS). However, subcontractor information maintained in the ESRS does not include wage determinations or any information regarding wages paid to contracted workers.

To obtain a sample of contracts for our review, we asked OCPO to provide (1) open and closed janitorial and food service contracts with subcontracts awarded during FYs 2006 to 2008, and (2) any such contracts that remained open during the first half of FY 2009, regardless of when awarded. Data provided showed that from FY 2006 to 2008, there were only three DHS contracts for janitorial services. No janitorial or food service contracts remained open during the first half of FY 2009.

The three DHS contracts identified were for janitorial services, totaling approximately \$2 million for services performed from FY 2006 to 2008. Information obtained from FPDS-NG showed that the contracts included a code indicating that a subcontracting plan was required to satisfy a specific socioeconomic goal.

⁷ FAR 52.222-41(k).

⁸ FAR 42.505(b)(1).

Conclusion

The current federal government contracting process, DOL's significant role and responsibilities regarding wages and labor management, and the absence of subcontractor information maintained in the FPDS-NG impacted efforts to address our review objectives. Therefore, we have reported on the processes and procedures that cover contractor and subcontractor wage payment activities; however, we did not include any recommendations.

Appendix A

Purpose, Scope, and Methodology

We conducted this review in response to a January 5, 2009, request from Representative Bennie Thompson, Chairman of the House Committee on Homeland Security, regarding concerns over contracting processes in which contractors may have subcontracted work in low-wage occupation categories, but subcontractors had not followed the wage schedules promised by contractors. His request made no specific references to DHS contracts. Our objectives were to (1) review selected DHS contracts with a predominance of low-wage positions, and (2) determine whether the actual wages paid for subcontracted low-wage work complied with prevailing wage structures and the prime contractor's initial wage schedule.

Since DOL has not defined the term "low wage," we focused our contract selections on janitorial and food service occupations, which were services specifically identified in Chairman Thompson's request, and designated by his senior staff as types of "low wage" services.

To obtain a sample of contracts for our review, we asked OCPO to provide (1) open and closed janitorial and food service contracts with subcontracts awarded during FYs 2006 to 2008, and (2) any such contracts that remained open during the first half of FY 2009, regardless of when awarded. We reviewed and analyzed applicable laws, policy documents, and records governing contracting and related areas. We also interviewed DOL officials, and DHS OCPO officials responsible for contracting and acquisition activities. We conducted our fieldwork from March to July 2009.

This review was conducted under the authority of the *Inspector General Act of 1978*, as amended, and according to the Quality Standards for Inspections, issued by the Council of the Inspectors General on Integrity and Efficiency.

Appendix B
Major Contributors to This Report

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