



**U.S. Department of Energy
Office of Inspector General
Office of Audits and Inspections**

AUDIT REPORT

The Department of Energy's Office of
Headquarters Procurement Services Contract
Awards Made to Alaska Native Corporations

OAI-M-16-09


April 2016



Department of Energy
Washington, DC 20585

April 6, 2016

MEMORANDUM FOR THE DIRECTOR, OFFICE OF MANAGEMENT

FROM: 
April G. Stephenson
Assistant Inspector General
for Audits and Inspections
Office of Inspector General

SUBJECT: INFORMATION: Audit Report on "The Department of Energy's Office of Headquarters Procurement Services Contract Awards Made to Alaska Native Corporations"

BACKGROUND

Alaska Native Corporations (ANC) were created to settle land claims with Alaskan natives and foster economic development. The Small Business Administration's (SBA) 8(a) Business Development Program (8(a) Program) helps eligible small disadvantaged businesses compete in the marketplace by offering a broad scope of assistance, such as specialized business training, counseling, marketing assistance, and high-level executive development. Since legislation passed in 1986 allowing ANCs and their subsidiary firms to participate in the 8(a) Program, Congress has extended special procurement advantages to ANCs, including the ability to receive sole source contracts of unlimited value and own majority interest in an unlimited number of subsidiaries at any one time under the 8(a) Program.

In 2012, the Department of Energy entered into a *Partnership Agreement* with SBA that delegated SBA's contract execution functions to the Department and established basic procedures for expediting the award of 8(a) Program contracts. The *Partnership Agreement* delineates responsibilities for oversight, monitoring, and compliance with procurement laws and regulations that govern 8(a) Program contracts. From 2012 through 2014, 30 active contracts valued at over \$237 million had been awarded to ANC firms by the Department's Office of Headquarters Procurement Services (Headquarters Procurement Services), including over \$226 million that were sole source contracts awarded under the 8(a) Program. Because of the importance of the 8(a) Program and the special procurement advantages afforded to ANC firms, we initiated this audit to determine whether Headquarters Procurement Services effectively managed awards made to ANCs.

RESULTS OF AUDIT

Our audit of 12 sole source contracts awarded by Headquarters Procurement Services to ANC firms under SBA's 8(a) Program, of which 11 contracts exceeded the simplified acquisition

threshold, revealed that Headquarters Procurement Services had not always effectively managed contract awards made to ANC firms. Specifically, we found that Headquarters Procurement Services:

- Could not demonstrate that it had requested SBA's required 8(a) Program eligibility determination for 3 of the 11 ANC sole source contracts that exceeded the simplified acquisition threshold;
- Had not always monitored ANC firms' compliance with the limitations on the subcontracting provision in contracts awarded under the 8(a) Program; and
- Had awarded to an ANC subsidiary firm a \$58 million sole source contract that appeared to conflict with the 8(a) Program's intent to prohibit follow-on contract awards.

Procurement officials were unable to demonstrate that they had requested SBA's approval of ANC awards under the 8(a) Program because they had not adequately maintained the necessary documents and completed Headquarters Procurement Services contract files. In addition, ANC contractors' compliance with subcontracting limitations were not adequately monitored because Headquarters Procurement Services did not ensure that the responsibilities outlined in the Department's *Partnership Agreement* with SBA were communicated to procurement officials awarding and managing ANC contracts. Also, the award of an apparent follow-on 8(a) Program sole source contract occurred because Headquarters Procurement Services had not followed SBA and Federal Acquisition Regulation requirements in determining whether the principal nature of the work performed under the contract had significantly changed from the work performed under the previous contract.

Weaknesses in the Headquarters Procurement Services procurement process increased the risk of contracts being awarded to ANC firms that were not eligible to receive the award under the 8(a) Program. If an ANC firm was awarded a sole source contract that it was not eligible to receive, qualified ANC firms and other disadvantaged small business concerns could be denied the opportunity to take advantage of business development benefits afforded by a competitive award under the 8(a) Program. Also, ineffective monitoring of ANC contractors' compliance with limitations on subcontracting could significantly limit the business development benefits that an ANC firm derives from an 8(a) Program award because the ANC firm is allowed to pass the major benefits of self-performing the contract to a subcontractor.

The Department plays a significant role in offering business development opportunities to ANC firms and other small businesses under SBA's 8(a) Program. To meet the goals of the 8(a) Program, it is important that the Department's procurement officials are aware of their responsibilities under the Department's *Partnership Agreement* with SBA. Although our audit focused on awards to ANC firms, the weaknesses we found could also affect awards made by the Department to other small businesses under the 8(a) Program. To address the issues outlined in this report, we made several recommendations designed to strengthen controls over the award and management of contracts to ANC firms and other recipients by Headquarters Procurement Services under the 8(a) Program.

MANAGEMENT RESPONSE

Management concurred with our findings and recommendations and indicated that corrective actions were planned. Management's comments and planned corrective actions are responsive to our findings and recommendations. Management's formal comments are included in Appendix 3.

Attachment

cc: Deputy Secretary
Deputy Under Secretary for Management and Performance
Chief of Staff

THE DEPARTMENT OF ENERGY'S OFFICE OF HEADQUARTERS PROCUREMENT SERVICES CONTRACT AWARDS MADE TO ALASKA NATIVE CORPORATIONS

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THE DEPARTMENT OF ENERGY'S OFFICE OF HEADQUARTERS PROCUREMENT SERVICES CONTRACT AWARDS MADE TO ALASKA NATIVE CORPORATIONS

DETAILS OF FINDING

The Department of Energy's Office of Headquarters Procurement Services (Headquarters Procurement Services) had not always effectively managed awards made to Alaska Native Corporations (ANC). Effective management of awards to ANC firms is necessary to ensure that contracts are awarded to eligible ANC firms, as well as to ensure that ANC firms are taking full advantage of the business development benefits received when performing their required share of the contract work and not passing those benefits to subcontractors. However, our review revealed that Headquarters Procurement Services could not demonstrate that it had requested the required Small Business Administration's (SBA) 8(a) Business Development Program (8(a) Program) eligibility determination for 3 of 11 ANC sole source contracts that exceeded the simplified acquisition threshold. We also found instances where Headquarters Procurement Services did not always monitor ANC contractor compliance with the limitations on subcontracting and applicable provisions of the Federal Acquisition Regulation (FAR). In addition, Headquarters Procurement Services awarded to an ANC firm a sole source contract that appeared to conflict with the 8(a) Program's intent to prohibit follow-on contract awards.

Alaska Native Corporation Eligibility Requirements

Headquarters Procurement Services could not always demonstrate that it had requested SBA's eligibility determination, which is required for sole source contracts awarded to ANC firms under SBA's 8(a) Program. The 8(a) Program, pursuant to section 8(a) of the *Small Business Act*, promotes the development of small business concerns owned and controlled by socially and economically disadvantaged individuals so that the small businesses can compete in the mainstream of the American economy. Small business development is accomplished by providing various forms of management, technical, financial, and procurement assistance.

In 2012, the Department entered into a *Partnership Agreement* with SBA that delegated SBA's contract execution functions to the Department and established basic procedures for expediting the award of 8(a) contracts. According to the *Partnership Agreement*, the Department must submit an offer letter to SBA for sole source requirements exceeding the simplified acquisition threshold when the Department identifies an 8(a) participant, such as an ANC. Procurements for goods and services greater than \$150,000 are considered exceeding the simplified acquisition threshold. According to SBA, when acquiring goods and services, Federal agencies are responsible for identifying the North American Industry Classification System (NAICS) code that describes the principal purpose of the procurement. SBA establishes numerical definitions of small businesses, or "size standards," for all for-profit industries and uses NAICS codes as a basis for its size standards. An ANC firm's size standard represents the largest size that the ANC firm may be, in either number of employees or annual receipts, and is determined independently without regard to its affiliation with the ANC parent or any other business enterprise owned by the ANC parent. The *Partnership Agreement* states that SBA will review the offer letter and issue an acceptance or rejection letter within 5 working days of receipt of the offer letter. Absent a notification of rejection from SBA within 5 working days of receipt of the offer letter, the Department may assume acceptance on the 6th working day for procurements other than

sole-source procurements that exceed \$20 million unless an extension has been requested and granted. Acceptance, among other things, includes SBA's 8(a) Program eligibility determination. As part of the eligibility determination, SBA reviews the NAICS code proposed by the Department and determines whether it is appropriate and corresponds with the size standard of the ANC firm at the time of the award.

Despite the responsibilities detailed in the *Partnership Agreement*, Headquarters Procurement Services could not always provide documentation showing that it had requested that SBA determine whether ANC firms were eligible to receive the sole source contracts Headquarters Procurement Services had awarded under the 8(a) Program. Our review of 8(a) sole source contracts awarded to ANC firms by Headquarters Procurement Services from 2012 through 2014 disclosed that Headquarters Procurement Services' offer letters were not available for 3 of 11 contracts selected that exceeded the simplified acquisition threshold. Specifically, in January 2012, a \$4.9 million sole source engineering services contract was awarded to an ANC firm for which there was no offer letter available in the Strategic Integrated Procurement Enterprise System (STRIPES), the Department's system for administering acquisition instruments. Headquarters Procurement Services officials informed us that the offer letter should have been retained in STRIPES, but when they researched STRIPES and other ancillary records, they determined that the offer letter for this contract and two other contracts were missing, as well as the subsequent SBA approval letters for these three contracts. Officials indicated that the contracting officers had assumed SBA's acceptance of the three contracts pursuant to the *Partnership Agreement* because they had not received rejection letters from SBA.

Alaska Native Corporation Subcontracting Limitations

We also identified instances where Headquarters Procurement Services had not monitored compliance with limitations on subcontracting in ANC contracts. FAR 52.219-14, *Limitations on Subcontracting*, describes the requirements for contracts that have been set aside or reserved for small business concerns or 8(a) Program concerns. According to FAR 52.219-14, when a contractor submits an offer and execution of a contract, the contractor agrees that it will self-perform a certain percentage of the contracted work depending on the type of contract. For example, for services contracts not related to construction, the contractor is required to complete at least 50 percent of the contracted work with its own employees. The purpose of this contract clause is to assure that small business concerns perform a significant portion of the contract work. The objective is to mitigate the potential for a small business to win the award and not take full advantage of the business development benefits of the contract because those benefits were passed to a subcontractor who performed most of the contract work.

According to the Department's *Partnership Agreement* with SBA, the Department will retain responsibility for compliance with the limitations on subcontracting and all applicable provisions of FAR 52.219-14. In addition, the Department must include monitoring and oversight provisions for all contract awards to ensure compliance with the performance requirements of FAR 52.219-14. Although most of the 12 ANC contracts we reviewed contained the clause requiring limitations on subcontracting, we found instances where Headquarters Procurement Services did not monitor the subcontracting limitations requirement to ensure that the ANC firms were completing their share of the work. Several Headquarters Procurement Services officials

indicated that they had no written procedures for monitoring ANC contractors' compliance with the subcontracting limitations provision and that no monitoring was performed after contracts were awarded.

In contrast, the National Nuclear Security Administration's (NNSA) Office of Acquisition Management had policies and procedures for monitoring compliance with the subcontracting limitations contract requirement. NNSA's internal policy, *Limitations on Subcontracting Compliance and Reporting Requirements – Construction* (Nov 2009, NNS-H-1023), provided detailed guidance to NNSA construction contract buyers that fulfilled the monitoring requirements established in the Department's *Partnership Agreement*. In addition to the internal policy, NNSA also provided staff with a handout on "Procurement Excellence Training." The handout provided further information, such as contracted work calculation models, for the buyers of various types of contracts. For example, the handout explained that if the contract was for supplies, the prime contractor must complete 50 percent of the cost of manufacturing, not including the cost of material. Furthermore, one NNSA contracting official stated that contractors provided reports every 6 months that cited task orders that included percentages of work performed, further demonstrating compliance with the subcontracting limitations. The NNSA contracting official stated that she was in contact with the contractors biweekly and performed a continuous review of invoices and, when necessary, payroll information.

Alaska Native Corporation Follow-On Award

Finally, Headquarters Procurement Services awarded a sole source contract to an ANC subsidiary firm that appeared to conflict with the 8(a) Program's intent to prohibit follow-on contract awards. In July 2014, Headquarters Procurement Services awarded a 3-year, \$58 million 8(a) Program sole source contract for training support and facility maintenance services at the National Training Center (NTC) in Albuquerque, New Mexico, to a company owned by an ANC that had previously received multiple prior contracts through another of its subsidiary firms. NTC is the center for the design and delivery of certified training for all uniformed, other specialized, and security professionals who carry out the Department's critical security functions.

Headquarters Procurement Services initially awarded a 2-year sole source contract to manage the NTC in January 2009 to a subsidiary firm of the ANC. In February 2011, Headquarters Procurement Services awarded a contract valued over \$55 million to the same ANC subsidiary for facilities support services and safety and security training at the NTC based on the contractor's demonstrated abilities to meet contract requirements of the existing contract. Prior to the February 2011 award, the Department's Office of Management recommended a 3-year contract instead of the requested 5-year sole source contract due to impending legislation to minimize the potential duration and award of sole source contracts to ANCs. Specifically, in February 2011, SBA updated Title 13, Chapter 1, Part 124 of the Code of Federal Regulations (CFR), *8(a) Business Development/Small Disadvantaged Business Status Determinations*, to include the requirement that once an ANC firm is admitted to the 8(a) Program, it may not receive an 8(a) Program sole source contract that is a follow-on contract to an 8(a) Program contract that was performed immediately prior to the contract by another participant (or former participant) owned by the same ANC.

Despite this requirement, in July 2014, Headquarters Procurement Services awarded another 3-year, \$58 million 8(a) sole source contract for training support and facility maintenance services at the NTC to another subsidiary firm owned by the same ANC that held the 2009 and 2011 contracts. Although we could not find a formal definition of a “follow-on contract,” Department procurement officials indicated that to be a follow-on contract, both contracts would have substantially the same requirements and, therefore, be classified under the same primary NAICS code. The previous two contracts were classified under NAICS code 611430, “Professional and Management Development Training,” and 561210, “Facilities Support Services,” respectively and the 2014 contract was classified under NAICS code 541519, “Information Technology Value Added Reseller.” Because of the change in NAICS code, procurement officials considered the subsequent contract to be a new requirement. To its credit, Headquarters Procurement Services submitted both ANC contract offerings to SBA, including the draft Performance Work Statement, Independent Government Cost Estimate, and Justification for Other Than Full and Open Competition. Headquarters Procurement Services then received SBA’s acceptance of the contracts based on the estimated dollar value and NAICS code provided in each offer, which is the criteria used by SBA to determine the ANC firm’s eligibility to receive the 8(a) award.

Despite the change of the NAICS code, we found the scope of work to be notably similar when we compared the performance work statements for the 2011 and 2014 contracts. For example, both contracts included similar requirements for facilities and management support operations, training program management, and training support operations. Although the addition of virtual training called for technology infrastructure and software at the NTC, the fundamental contract requirements for training development and delivery at the NTC did not change and was not an information technology acquisition, as indicated by the new NAICS code. In fact, the Justification for Other Than Full and Open Competition document for the 2014 contract clearly linked the two contracts by indicating that the contractor had already begun the process of moving to virtual training under the 2011 contract and that a competition would “disrupt and delay the progress being made at NTC.” In addition, in response to questions from the Department’s independent review of the sole source justification prior to the award of the contract, Headquarters Procurement Services officials acknowledged that the contracts were for similar services but determined that the new contract would be awarded under a different NAICS code and include some slightly different work. Given that the requirements in both contracts were notably similar and the subsequent contract was awarded on a sole source basis to a firm owned by the same ANC, the award of this contract appeared to conflict with the 8(a) Program’s intent to prohibit follow-on contract awards.

Oversight and Monitoring

Headquarters Procurement Services’ inability to demonstrate that procurement officials had requested SBA’s approval of ANC awards under the 8(a) Program occurred because it did not adequately maintain documents and complete files. In addition, ANC contractors’ compliance with subcontracting limitations were not adequately monitored because Headquarters Procurement Services did not ensure that the responsibilities outlined in the Department’s *Partnership Agreement* with SBA were communicated to procurement officials awarding and managing ANC contracts. Regarding the questioned 8(a) Program sole source follow-on

contract, Headquarters Procurement Services had not followed SBA and FAR requirements to determine whether the principal nature of the work performed under the contract had significantly changed from the work performed under the previous contract.

Headquarters Procurement Services had not adequately maintained contract files containing the required documents demonstrating that procurement officials had requested SBA's eligibility determination and approval to award sole source contracts to ANC firms under the 8(a) Program in accordance with the Department's *Acquisition Guide* and *Partnership Agreement*. According to the *Partnership Agreement* and Chapter 19 of the *Acquisition Guide*, entitled "Small Business Programs – An Overview," the Department is required to request SBA's approval of sole source awards to ANC 8(a) Program participants. In response, SBA reviews the Department's offer letters, makes eligibility determinations for the awards, and issues an acceptance or rejection letter to the Department. Absent a rejection letter within 5 working days of receipt of an offer letter, the *Partnership Agreement* allows the Department to assume acceptance on the 6th working day. In addition, FAR 4.801, *Government Contract Files – General*, requires the head of each contracting office to establish files containing the records of all contractual actions sufficient to constitute a complete history of the transaction. Headquarters Procurement Services officials responsible for the ANC contracts we reviewed told us that they had sent offer letters to SBA and received SBA's corresponding acceptance letters. These officials also informed us that these documents should have been retained in STRIPES, but when they researched STRIPES and other ancillary records, the request and/or approval letters were missing. The officials could not provide an explanation as to why the documents were missing.

In contrast to the internal policy established by NNSA, Headquarters Procurement Services had not ensured that procurement officials were aware of their responsibilities for monitoring ANC contractors' compliance with subcontracting limitations outlined in the Department's *Partnership Agreement* with SBA. Although the Department's *Acquisition Guide* provides direction for obtaining SBA approval of 8(a) Program awards, there is no guidance on the Department's responsibility for monitoring ANC contractor compliance with 8(a) Program limitations on subcontracting under the *Partnership Agreement*. The *Partnership Agreement* states that the Department will retain responsibility for compliance with the limitations on subcontracting requirement and all applicable provisions of FAR 52.219-14 and any of the Department's regulations. The *Partnership Agreement* requires the Department to include monitoring and oversight provisions in all contracts awarded under the 8(a) Program to ensure that all contracts comply with the limitations on subcontracting performance requirement. Headquarters Procurement Services officials responsible for the ANC contracts we reviewed told us that the subcontracting limitations requirement was not monitored after the contracts were awarded. The officials also informed us that they were not aware of the Department's requirement to conduct such monitoring.

In addition, Headquarters Procurement Services had not followed SBA and FAR requirements in determining whether the principal nature of the work under a sole source contract awarded to an ANC firm had significantly changed from the work performed under the previous sole source contract. For purposes of Government procurement, an information technology procurement classified under this industry category must consist of at least 15 percent and not more than 50 percent of value added services as measured by the total price less the cost of information

technology hardware, computer software, and profit. Headquarters Procurement Services determined that 15.79 percent of the estimated direct labor costs of the contract were attributable to Information Technology value-added services; however, they did not take into account the total contract price when performing this analysis. Although contracting officials indicated that this analysis was the basis for the change in the NAICS code, the rationale for the change was not sufficiently documented in the contract file to enable an independent source to reach the same conclusion for the NAICS code change.

When considering the entire contract price, as required by SBA, our analysis indicates the Information Technology value-added services accounted for approximately 6 percent of the total costs of the contract. According to FAR 19.102(d), *Size Standards*, when acquiring a service that could be classified in two or more industries, contracting officers should apply the NAICS code that accounts for the greatest percentage of the contract price. Given that Information Technology value-added services only accounted for 6 percent of the contract price, the use of this NAICS code appears to have been inappropriate. The intent of the 8(a) Program's eligibility determination is to prevent an ANC firm that performed a specific 8(a) contract for many years from passing that contract on to another 8(a) firm owned by the same ANC when it is no longer a participant in the 8(a) Program. In our view, given the Department's prior recognition of similarities between the 2011 and 2014 contracts and the lack of a documented analysis to support the rationale for changing the NAICS code upon which SBA partially bases its eligibility determination, it is questionable whether the award satisfied the intent of the 8(a) Program.

Procurement officials told us that they had reviewed the applicability of the NAICS codes and, since the NTC was moving from classroom based training towards virtual training, they had determined that the change in primary NAICS codes from 561210, "Facilities Support Services," to 541519, "Information Technology Value Added Reseller," was acceptable. However, SBA defines an "Information Technology Value Added Reseller" as a company that provides a total solution to information technology acquisitions by providing multi-vendor hardware and software, along with significant value added support services. As previously stated, our analysis showed that the value-added services accounted for a relatively small percentage of the total contract price.

Opportunities for Improvement

Weaknesses in the Headquarters Procurement Services procurement process increase the risk that procurement officials could award a contract to an ANC firm that is not eligible to receive the award under the 8(a) Program. Furthermore, these problems may persist under other Department, non-ANC 8(a) Program awards. Business development opportunities available to participants in the 8(a) program include specialized business training, counseling, marketing assistance, and high-level executive development provided by SBA and other partners. If an ANC firm were to be awarded a sole source contract that it is not eligible to receive, qualified ANC firms and socially and economically disadvantaged small business concerns could be denied the opportunity to take advantage of the business development benefits afforded by a competitive award under the 8(a) Program. Also, ineffective monitoring of ANC contractors' compliance with limitations on subcontracting could significantly limit the business development benefits an ANC firm derives from an 8(a) award because the ANC firm is allowed to pass the

major benefits of performing the contract to a subcontractor. In such cases, the ANC firm may benefit financially by earning contract fees and profit, but may not be receiving the program's intended business development benefits by self-performing most of the work requirements specified in the contract.

RECOMMENDATIONS

It is important that Headquarters Procurement Services procurement officials are aware of their responsibilities for awarding and managing contracts to ANCs under the Department's 8(a) Program *Partnership Agreement* with the SBA. To strengthen controls over the 8(a) Program and ensure that contracts are awarded to eligible ANC firms that perform the required percentage of contracted work, we recommend that the Director, Office of Management:

1. Require procurement officials to document in contract files the Department's request and the SBA's acceptance, including assumed acceptance in instances where the SBA does not provide a letter, of all contracts awarded to ANCs and other recipients under the 8(a) Program in accordance with the Department's *Partnership Agreement* with the SBA and guidance in Chapter 19 of the Department's *Acquisition Guide*;
2. Establish procedures to ensure that procurement officials are aware of the monitoring requirements in the Department's *Partnership Agreement* with the SBA, with regard to contractor compliance with the limitations on the subcontracting requirement in ANC contracts awarded under the 8(a) Program;
3. Ensure that, prior to awarding an ANC contract under the 8(a) Program, procurement officials determine the primary NAICS code in accordance with Small Business Administration and FAR requirements; and
4. Conduct a review to determine whether other awards made under the 8(a) Program have been impacted by issues discussed in this report and implement corrective actions, accordingly.

MANAGEMENT RESPONSE

Management concurred with our findings and recommendations and indicated that corrective actions were planned to address the identified issues. Specifically, management stated that a Contract File Checklist that Contracting Officers are required to use will be updated to include an area for contract documentation. Additionally, management indicated that the Office of Headquarters Procurement Services will train its workforce on the limitations of subcontracting regulations and incorporate mandatory policy into the Contract Specialist Guide. Management also stated that it would use the pre-award review process and training to ensure that the designated primary NAICS code is in accordance with Small Business and FAR requirements. Finally, management stated it will conduct a review to determine whether other awards made under the 8(a) program were affected by issues discussed in this report.

AUDITOR COMMENTS

Management comments and planned corrective actions are responsive to our recommendations. Management's formal comments are included in Appendix 3.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The objective of the audit was to determine whether the Department of Energy's Office of Headquarters Procurement Services (Headquarters Procurement Services) effectively managed awards made to Alaska Native Corporations (ANC).

Scope

This audit was conducted between October 2014 and April 2016, at Department Headquarters in Washington, DC, and Sandia National Laboratories in Albuquerque, New Mexico. The audit scope included a review of active ANC awards in 2012, 2013, and 2014 at those locations and inquiries regarding current policies and procedures for managing ANC awards at various other Department locations. This audit was conducted under Office of Inspector General project number A15GT005.

Methodology

To accomplish our audit objective, we judgmentally selected 12 sole source awards made to ANC firms by Headquarters Procurement Services. This selection was based on the number, type, and value of ANC awards. Because a judgmental sample of awards at one Department location was used, the results were limited to the location selected. Additionally, we:

- Researched Federal and Department laws and regulations related to ANC awards;
- Reviewed the Department's *Partnership Agreement* with the Small Business Administration;
- Reviewed Department policies, procedures, and practices for managing awards made to ANCs;
- Interviewed key Department personnel; and
- Obtained and analyzed selected ANC contract awards and related records, including procurement data.

We conducted this performance audit in accordance with generally accepted Government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Accordingly, we assessed significant internal controls and the Department's implementation of the *GPRA Modernization Act of 2010* and determined that it had not established performance measures specifically related to the management of contract awards to ANCs. Because our review was limited, it would not

necessarily have disclosed all internal control deficiencies that may have existed at the time of our audit. Finally, we did not rely on computer-processed information to achieve our audit objective.

We held an exit conference with Department officials on March 24, 2016.

RELATED REPORTS

Office of Inspector General

- Audit Report on [Review of the Department of Energy's Contract with AHTNA Government Services Corporation Contract No: DE-AC52-04NA25282](#) (OAS-L-09-01, October 2008). This audit noted certain issues that, if corrected, could enhance the National Nuclear Security Administration's (NNSA) management of Alaska Native Corporation (ANC) contracts. Specifically, NNSA did not have a formal documented process for monitoring the percentage of work performed by AHTNA Government Services Corporation and reporting results to the Small Business Administration (SBA). The report stated that it is important for the Department of Energy to use an accurate process for determining the percentage of work performed by the ANC to ensure that it is satisfying program goals. The audit also noted that NNSA was not providing SBA with all contractual documents required by the Code of Federal Regulations and the *Partnership Agreement* between the Department of Energy and SBA. Providing this information to the SBA is important because the SBA retains the ultimate responsibility for ensuring that companies comply with all applicable program regulations.

Government Accountability Office

- Report on [8\(a\) Subcontracting Limitations: Continued Noncompliance with Monitoring Requirements Signals Need for Regulatory Change](#) (GAO-14-706, September 2014). The Government Accountability Office (GAO) reported that with two exceptions, the contracting officers that they met with generally did not monitor the amount of subcontracted work to ensure 8(a) contractors complied with subcontracting limitations. Contracting officers did not monitor and were not fully aware of what they were required to do, in part because their responsibilities are not set forth in the Federal Acquisition Regulation (FAR), the primary source for Federal procurement policies, to which they regularly turn for guidance. Instead, these responsibilities are outlined in agency agreements with the SBA. The GAO recommended that the Office of Federal Procurement Policy Administrator take the appropriate steps to amend the FAR to reflect contracting officers' responsibilities for monitoring 8(a) subcontracting limits, conducting assessments of an 8(a) firm's ability to comply with subcontracting limitations, and requiring 8(a) contractors to regularly report on the amount of subcontracted work.

MANAGEMENT COMMENTS



Department of Energy
Washington, DC 20585
March 4, 2016

MEMORANDUM FOR RICKY HASS
ASSISTANT INSPECTOR GENERAL FOR INSPECTIONS
OFFICE OF INSPECTOR GENERAL
Berta Schreiber
FROM: BERTA SCHREIBER
ACTING DIRECTOR
OFFICE OF ACQUISITION MANAGEMENT

SUBJECT: Response to Draft Audit Report: "The Department of Energy's Office of Headquarters Procurement Services Contract Awards Made to Alaska Native Corporations" (A15GT005)

Thank you for the opportunity to review and respond to the Inspector General Draft Audit Report "The Department of Energy's Office of Headquarters Procurement Services Contract Awards Made to Alaska Native Corporations."

RECOMMENDATION 1: *Require procurement officials to document in contract files the Department's request and the SBA's acceptance, including assumed acceptance in instances where the SBA does not provide a letter, of all contracts awarded to ANCs and other recipients under the 8(a) Program in accordance with the Department's Partnership Agreement with the SBA and guidance in Chapter 19 of the Department's Acquisition Guide.*

MANAGEMENT RESPONSE: Management agrees. In Fiscal Year 2015, the Office of Headquarters Procurement Services implemented a policy requiring Contracting Officers to utilize a Contract File Checklist. This checklist will be updated to include an area for documentation as recommended. Action will be complete no later than April 30, 2016.



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RECOMMENDATION 2: *Establish procedures to ensure that procurement officials are aware of the monitoring requirements in the Department's Partnership Agreement with the SBA, with regard to contractor compliance with the limitations on the subcontracting requirement in ANC contracts awarded under the 8(a) Program.*

MANAGEMENT RESPONSE: Management agrees. To address this finding, the Office of Headquarters Procurement Services will train its workforce on limitations of subcontracting regulations. The Office of Headquarters Procurement Services has also drafted a policy instruction that will be incorporated into the Contract Specialist Guide as mandatory policy. Action will be complete no later than July 31, 2016.

RECOMMENDATION 3: *Ensure that prior to awarding an ANC contract under the 8(a) Program procurement officials determine the primary NAICS code in accordance with SBA and Federal Acquisition Regulation requirements.*

MANAGEMENT RESPONSE: Management agrees. As these requirements already exist, the Office of Headquarters Procurement Services will ensure compliance with these requirements using our pre-award review process. This, in concert with our training session and Contract File Checklist will improve our compliance in this area.

RECOMMENDATION 4: *Conduct a review to determine whether other awards made under the 8(a) Program have been impacted by issues discussed in this report and implement corrective actions accordingly.*

MANAGEMENT RESPONSE: Management agrees. A review will be conducted no later than September 30, 2016. Should corrective action be appropriate, such action will be completed no later than December 31, 2016.

FEEDBACK

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Department of Energy
Washington, DC 20585

If you want to discuss this report or your comments with a member of the Office of Inspector General staff, please contact our office at (202) 253-2162.