



U.S. DEPARTMENT OF THE INTERIOR OFFICE OF INSPECTOR GENERAL



FY2005 Department of the Interior Purchases Made on Behalf of the Department of Defense





United States Department of the Interior
OFFICE OF INSPECTOR GENERAL
Washington, DC 20240

JAN - 9 2007

Memorandum

To: Dirk Kempthorne
Secretary

From: Earl E. Devaney
Inspector General

Subject: Audit of FY2005 Department of the Interior Purchases Made on Behalf of the
Department of Defense (Report No. X-IN-MOA-0018-2005)

Interagency contracting is a tool that, when effective, can help agencies to streamline the acquisition process and increase cost efficiency. The Department of the Interior (DOI) has two acquisition centers that assist other government agencies — GovWorks and the Acquisition Services Division, Southwest Branch (SWB), of the National Business Center. In FY2005, DOI executed procurements through these centers in excess of \$1.7 billion on behalf of the Department of Defense (DOD).

The National Defense Authorization Act for Fiscal Year 2006 required that the Department of Defense Office of Inspector General (DODIG) work with the other Inspectors General to review procurement policies, procedures, and internal controls, as well as their administration, for all agencies processing more than \$100 million of procurements for DOD. To meet this requirement, DODIG and the DOI Office of Inspector General (OIG) conducted a joint audit of the two DOI contracting centers that provide acquisition services to DOD. The objective of the audit was to determine whether DOI complied with DOD procurement requirements, including whether DOI and DOD used and tracked funds properly. DODIG also evaluated whether DOD had a legitimate need to use DOI contracting services. DODIG is preparing a separate report for DOD management.

Overall, we found that neither GovWorks nor SWB complied in full with legal requirements, with federal acquisition regulations, and with DOD supplemental requirements. In fact, the contracting centers routinely violated rules designed to protect U.S. Government interests and the public trust. These actions put DOI at risk for Antideficiency Act violations, acquisition center loss of business, and loss of public confidence and trust.

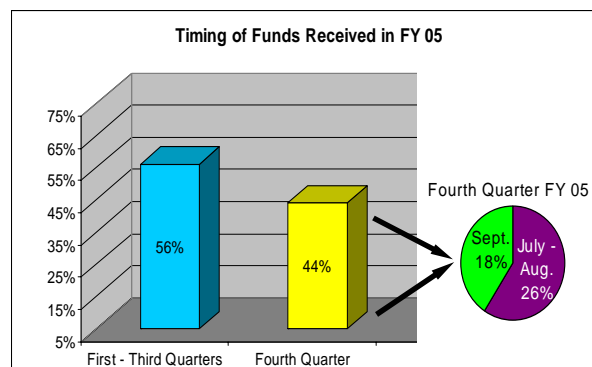
INTERAGENCY CONTRACTING AT THE DEPARTMENT OF THE INTERIOR

DOI provides interagency contracting services to DOD and other federal agencies through two fee-for-service organizations — GovWorks and SWB.

GovWorks, which operates as a franchise fund, was originally authorized by the Government Management Reform Act of 1994 and has been reauthorized annually since that time. Franchise funds were created so that common administrative services could be centralized and efficiencies and cost savings would occur due to economies of scale, diminished overhead, and competition. The authorizing legislation allows GovWorks to retain up to 4 percent of its total annual income for DOI initiatives, such as acquiring an integrated financial system.

SWB operates as part of a working capital fund. Its mission is to provide common administrative and support services efficiently and economically to the bureaus and offices of DOI and other federal agencies. Working capital funds may perform services for other organizations under Economy Act agreements that allow full reimbursement of costs but do not authorize earning or retaining any excess funds above costs. SWB was originally the Directorate of Contracting Mission Team, operated by the U.S. Army Intelligence Center and Fort Huachuca, and is currently located at Fort Huachuca, Arizona. DOI acquired the operation in 2001.

In FY2005, GovWorks received more purchase requests in the fourth quarter than it did in any other quarter of that year. DOD is the largest customer for both GovWorks and SWB, representing about 60 percent of activity for both organizations.



GovWorks and SWB bought various types of goods and equipment, everything from balaclavas and gloves to body armor and plasma televisions for DOD. The Centers also procured a wide variety of services on behalf of DOD components, such as janitorial services, research and development efforts, engineering, and information technology systems and support.

Agencies such as GovWorks and SWB that provide acquisition services and assistance to other government entities are obligated not only to comply with all government-wide procurement laws and regulations but also must follow internal guidance and the policy guidance of the requesting agency.

Results of Audit

In providing acquisition services to DOD, DOI did not always follow appropriation and procurement laws, regulations, and rules. As a result, DOI left DOD vulnerable to fraud, waste, and abuse. DOI also made itself vulnerable to potential sanctions, loss of acquisition center business, and a loss of public trust.

We examined 49 contracting actions and found 19 potential violations of the Antideficiency Act (ADA) as the actions are using what appear to be expired funds. We found another potential violation of the ADA on a contract that appeared to obligate the government in advance of appropriation of the funds. We also found other types of deficiencies or questionable practices in 34 of the 49 contracting actions (69 percent). Those deficiencies and questionable actions include an improper contract, which created a potential ADA violation; unapproved contracting mechanism; and various failings of contract administration procedures. Perhaps of more importance, DOI did not always apply the principles of good stewardship over federal resources when providing contracting services to DOD.

Bona Fide Needs Rule

The U.S. Congress first appropriated funds in 1789 “for the service of the present year.” Today, 31 U.S.C. § 1502 continues this funding concept. Funds are available only for the needs of the fiscal period for which the funds are authorized. These funds expire and cannot be used for needs that arise during subsequent fiscal periods. This is commonly known as the bona fide needs rule.

Potential Antideficiency Act Violations

Both GovWorks and SWB may have violated the Antideficiency Act.

GovWorks potentially violated the ADA when acquiring goods and services or awarding contracting actions for DOD by using what appear to be expired funds on DOD purchases. SWB also potentially violated the ADA when it obligated the U.S.

Government to pay funds over a 3-year period regardless of fund availability. Further, GovWorks entered into a sub-lease agreement that is not authorized by law, and as a result, any payments made on this sub-lease may be improper uses of appropriated funds in potential violation of the ADA.

Using Potentially Expired Funds

GovWorks routinely uses potentially expired funds and, as a result, has potentially violated the ADA. In general, federal funds may only be used for the bona fide needs that occur during the period for which they were appropriated. In other words, monies appropriated by the Congress for FY2004 may not be used in FY2005 for the needs of FY2005. The funds GovWorks is using may have expired because the Military Interdepartmental Purchase Requests (MIPRs) funding documents lacked the specificity required to establish the bona fide need and record the obligations. DOD components often send funds to GovWorks at or near the end of their period of availability and sometimes provide only vague descriptions of the products or services being requested. These vague descriptions are not sufficient to demonstrate that a bona fide need existed in

the fiscal period for which the funds were appropriated. For example, in FY2004 a DOD component sent approximately \$9 million to GovWorks for “competitive sourcing (A-76) support services.” The file did not provide any information about the functions or locations where the studies were to be conducted. An order should be sufficiently detailed to permit the contracting officer to immediately place the order without the need for further customer consultation. For example, a request to purchase supplies should identify the types of items required, as well as the quantity. For services, the order should contain a detailed description of the work needed. The Comptroller General has ruled that a purchase order that lacks a description of the products to be provided is not sufficient to create a recordable obligation.

It appears GovWorks accepts vague and nonspecific requests for acquisition services to allow DOD components to park¹ or bank funds at GovWorks and inappropriately extend their period of availability. Although GovWorks claims it does not believe that Congress intended for a franchise fund to perform financial alchemy and turn huge amounts of one-year funds into no-year funds, it appears that is what is happening. In FY2005, over 40 percent of the funds received by GovWorks were received during the last quarter of the fiscal year; 18 percent or about \$270 million² was received in September alone. In the past, GovWorks advertised that it could extend the availability of limited appropriations and convert these funds to no year appropriations although it has since ceased this advertising practice. Despite requirements that DOD components transfer a best estimate of anticipated costs with a purchase request for products or services, DOD components frequently used MIPRs to transfer funds in bulk, with vague descriptions of requirements and no explanation or support for the amounts transferred. GovWorks, in turn, frequently uses funds from multiple MIPRs for a single purchase, sometimes appearing to try and use the oldest money first. For example, for Contract Action 41181, awarded in December 2004, GovWorks initially used funds from four separate MIPRs — three with FY2001 funds and one with FY2004 funds. In January 2005, GovWorks de-obligated the funds from one FY2001 MIPR and replaced those funds with funds from four additional MIPRs, including one with FY2000 funds. For the 29 contract actions we reviewed, GovWorks used funds from 103 MIPRs.

The audit team reviewed 29 DOD purchases or orders awarded during FY2005 by GovWorks and determined that GovWorks used expired funds for the purchases on 19 contracting actions (66 percent). For example:

- **DOI Contract 41181.** A GovWorks contracting officer awarded contract action 41181 to purchase decision agent network³ equipment for the Pentagon Telecommunications Service Center (PTSC) for \$108,196. DOI contract action 41181, awarded on December 21, 2004, was partially funded, for \$72,033, using

¹ The term “to park funds” refers to the transfer of appropriated funds by one agency to another agency’s acquisition center for the procurement of goods and services under circumstances where a bona fide determination is in doubt.

² We used budget information to determine total funding received in FY2005. We then multiplied that amount by the 18 percent of total funding GovWorks reported it received in September 2005.

³ The “Decision Agent” consists of a suite of integrated software applications run on a Windows 2000 server. The system is designed to automate the processes of identifying, filtering, and distributing messages to specified addresses and recipients, based on interest profiles and security clearances.

FY2001 Army Operations and Maintenance (O&M) funds that expired on September 30, 2001⁴. The equipment consisted of commercial items, and we found no evidence that a long lead-time was required to purchase these items, that the items were needed to replenish the inventory, or that there was an unforeseen delay in purchasing these items. Use of FY2001 funds to satisfy FY2005 requirements fails to meet the intent of the bona fide needs rule.

- **DOI Contract 41432.** On February 8, 2005, a GovWorks contracting officer awarded contract action 41432, for \$7,476, to purchase three 42-inch high definition plasma televisions with speakers for the PTSC. Contract action 41432 was funded using FY2004 Army O&M funds that expired on September 30, 2004. The equipment consisted of commercial items, and we found no evidence that a long lead-time was required to purchase these items, that the items were needed to replenish the inventory, or that there was an unforeseen delay in purchasing these items. Use of FY2004 O&M funds to satisfy a FY2005 requirement does not meet the intent of the bona fide needs rule.

GovWorks has a written policy that is intended to govern the review and acceptance of funding documents received from its clients, including how to determine whether a purchase request document includes enough information to establish a bona fide need. Based on our review of the contract files, however, we saw no evidence this policy was followed. Further, DOI officials told us that they relied on DOD to send only valid requests. GovWorks does have a responsibility to ensure its contracting actions comply with federal laws and regulations. Since the Government Accountability Office (GAO) has identified interagency contracting as a high-risk management area and since previous audit reports have identified DOD's noncompliance with these rules, GovWorks should, as a steward of federal resources, rigorously examine DOD's requests to ensure compliance with the bona fide needs rule.

As of October 27, 2005, DOI had \$577 million⁵ of potentially expired funds on its books as unfilled customer orders. These funds were potentially expired because they were appropriated for FY2005 or earlier periods.

In March 2006, we provided DOI information identifying the customer orders that made up the \$577 million. We requested that DOI research and resolve these items to avoid the possibility of spending expired funds in FY2006 and thereby avoid additional potential ADA violations. DOI continues its analysis of the issues and is in the process of resolving them.

In August 2006, we examined an additional 12 purchase requests from the transactions making up the \$577 million and found five did not have an established bona fide need. This lack of bona fide need resulted in expired funding at the end of FY2005.

⁴ The three MIPRs include MIPR1MINTPR070 for \$6,831; MIPR1JDIT0N046 for \$26,399; and MIPR1KINTWS058 for \$38,803. MIPR4MINTMM125, for \$36,163, using FY2004 O&M funds, was also used to fund the purchase.

⁵ The \$577 million represents approximately \$393 million received from DOD agencies and approximately \$184 million received from nonDOD agencies.

Unfortunately, DOI had also expended expired funds on three of the five transactions, which created additional potential ADA violations.

Potential Advance Obligations

SWB executed an Indefinite Delivery, Indefinite Quantity contract in February 2003 for the conduct of personnel security research. The contract guaranteed a minimum of \$1 million over a 3-year period. Although the executed contract contained standard language from Federal Acquisition Regulation (FAR) clause 52.232-19, *Availability of Funds for the Next Fiscal Year*, the date sections were blank and, therefore, this wording did not adequately protect the government from obligations beyond the current fiscal year. Because of this we conclude that SWB may have violated the ADA when it obligated the U.S. Government to pay funds over a 3-year period regardless of fund availability.

Sub-lease for the Counterintelligence Field Activity

GovWorks entered into an unauthorized sub-lease agreement to obtain office space for contractors on behalf of the Counterintelligence Field Activity (CIFA)⁶. Government agencies are limited by statute to using appropriated funds only for authorized purposes (31 U.S.C. § 1301(a) (1982)), and, as a result, the payments for this sub-lease potentially violate the ADA.

Using the U.S. Small Business Administration (SBA) 8(a) Business Development Program, GovWorks contracted with TKC Communications, Inc. (TKC), an Alaskan Native Corporation, to obtain office space for contractors working for the CIFA. TKC leased the space from the building owner, but the lease document clearly describes the intent to obligate the U.S. Government to the lease agreement. GovWorks does not have the authority to lease space — this authority is reserved to the General Services Administration (GSA), unless specifically delegated to another government agency. Neither GovWorks nor CIFA had a delegation of authority from GSA. Further, this space was intended to be occupied by contractors, and even GSA does not have the authority to lease space for commercial contractors. As a result, GovWorks did not have, nor could it acquire, the delegated authority to enter into a lease agreement and could not delegate that authority to TKC. Furthermore, because the GovWorks/TKC contract was entered into without legal authority, it was likely void from its inception⁷.

GovWorks officials have stated that the contract was for facilities management services and not a lease. However, the bulk of the contract — approximately 80 percent of the

⁶ We also reviewed a contract for CIFA (1435-04-03-RC-73024) for approximately \$16.9 million. This contract action was for transition activities to include relocation of contractor staff and government-furnished equipment. This contract action may have violated Public Law 107-248, which restricts the use of funds exceeding \$500,000 for DOD relocation within the National Capital Region.

⁷ Even if GovWorks and/or CIFA had been authorized to contract for leased space, the process that was used to obtain this space bypassed the requirements of multiple laws and rules governing the acquisition of leased space for DOD entities including 40 U.S.C. § 3307, 10 U.S.C. § 2662(a)(1)(B), 31 U.S.C. § 1341(a)(1)(A), 31 U.S.C. § 1301, and 10 U.S.C. § 2805; Public Law 107-248 section 8020 of the DOD Appropriation Act of 2003; and DOD Instruction 5305.5, “Space Management Procedures, National Capital Region,” June 14, 1999.

estimated \$94 million cost of this contract — is for the lease payments. The statement of work requires the contractor “to provide space for multiple activities operated, sustained and controlled by Contractor personnel for” CIFA as a requirement of the contract. Other documents clearly indicate that this contract is a sub-lease arrangement between GovWorks and TKC for space to be occupied by CIFA contractors. These documents include the lease between TKC and the commercial vendor, TKC’s proposal to GovWorks, and correspondence between CIFA officials and GSA officials that request either a delegation of authority to lease space or an assurance that no delegation was needed because the space was for contractor personnel.

Because GovWorks authorized the negotiation of a lease and payment of rental costs without authorization to do so, its contract with TKC constituted an unauthorized commitment likely resulting in a void contract. Consequently, DOI may have violated the ADA. Congressional involvement may be required to sort out this contract action. GovWorks will need to coordinate with CIFA to terminate that agency’s use of the space obtained through TKC or to identify and pursue potential means to ratify or correct the unauthorized commitment.

Internet-Based Electronic Storefront

**Use of the OMC left
DOD customers
vulnerable to poor
contracting practices,
fraud, waste, and abuse.**

SWB contracted with a commercial vendor to develop and operate an internet-based electronic storefront (the Open Market Corridor or OMC) without obtaining appropriate reviews and approvals and without designing and implementing controls to safeguard government interests. As a result, SWB left DOD customers vulnerable to poor contracting practices, fraud, waste,

and abuse on those orders placed through the OMC which totaled more than \$238 million since 2003.

Approvals

SWB did not obtain the approvals necessary to obtain or implement an electronic storefront. SWB and its customer, the Naval Postgraduate School, wanted to establish a one-stop, cradle-to-grave federal procurement system that bypassed DOI’s ordinary procurement system. SWB anticipated that high cost orders (for as much as \$10 million) would be processed through the storefront. SWB did not obtain review and approval of the proposed contract from DOI procurement officials and did not obtain a legal review of the proposed contract from the Office of the Solicitor. Further, SWB did not obtain information technology security reviews and accreditation for this internet-based system. For this unique procurement action, especially with such high dollar value anticipated usage, these reviews were essential.

Internal Control Issues

SWB did not design and implement sufficient internal controls over the operation of the OMC. As a result:

- Competition was inappropriately limited.
- Awards were made to vendors that did not appear to be the appropriate providers of the types of goods and services purchased.
- A nonwarranted ordering officer ordered more than \$135 million in goods and services through the OMC without the contracting officer's oversight.

Limited Competition. Using the OMC limited competition because not all possible vendors were registered in the OMC system. Competition was further limited because the OMC permitted ordering officers to select which vendors would receive solicitations without a public notice. Nonselected vendors in the OMC had no access to the posted solicitations and, therefore, would have had no knowledge of a solicitation and no opportunity to participate in the bidding or to protest their exclusion. Further, there were no restrictions built into the OMC on how short a time period vendors were given to respond to solicitations. Unreasonably short time limits for responses would also limit competition. We identified some awards that were made within hours of a solicitation.

Inappropriate Vendors. Awards were made through the OMC to what appeared to be inappropriate vendors. Examples we found include the following.

- Sixteen OMC vendors appeared to be 1) Government employees or 2) firms affiliated with Government employees.
- One company that did not appear to deal in furniture was solicited for office furniture, while another vendor that specialized in office furniture was not given the opportunity to bid on the solicitation.
- One vendor that specializes in software development received an order for armor protection for use on Army military vehicles that are located in combat zones.

DODIG referred selected transactions to the DOD Deputy Inspector General for Investigations and the Navy Acquisition Integrity Office for further review.

Ordering Officer. We found that a warranted contracting officer granted ordering officer authority — with a \$5 million limit on individual transactions — to a non-warranted lecturer at the Naval Postgraduate School. The contracting officer told us that she knew the lecturer did not have a warrant when she gave him ordering officer authority. However, she thought the lecturer's law school degree, in addition to the training he said he had taken and the courses he taught, justified her granting him this authority. The lecturer processed over 1,600 orders totaling almost \$135 million in a 2-year timeframe. In addition to placing orders for his own organization, the lecturer placed orders on behalf of the Army, the Marine Corps, and other Navy activities. The contracting officer did not review or oversee these orders. DODIG

has referred these transactions to the Navy Acquisition Integrity Office for further review.

Based on our discussions with DOI about the OMC, DOI made the decision to immediately take the system offline on March 3, 2006. Subsequently, the contract has expired, and, at the time our audit report was issued, DOI did not plan on using the OMC as a procurement tool in the future.

Contract Administration Issues

DOI did not ensure there were adequate internal controls over the contract process.

DOI acquisition centers violated multiple contracting rules and regulations in support of its DOD customers. We identified a number of problem areas including a lack of competition, unsupported price reasonableness decisions, insufficient review of contractor proposals, inadequate government cost estimates, inadequate legal reviews, and a failure to adequately oversee

contracts. Overall, we found significant noncompliance with steps designed to protect the U.S. Government's interests. For example:

- Legal reviews were insufficient.
- Price reasonableness determinations were unsupported.
- Controls were not in place to prevent organizational conflicts of interest.

As a result, DOI did not provide adequate safeguards to ensure that DOD resources were protected by appropriate contract provisions and that the resources were used efficiently.

Legal Reviews

We found that GovWorks and SWB are not ensuring that adequate legal reviews are being performed. DOI policy requires that all proposed solicitations in excess of \$500,000 for noncommercial items and in excess of \$2 million for commercial items receive a legal review by the Office of the Solicitor. A legal review is also required for all negotiated contract documents prior to award for all acquisitions in excess of \$500,000. We reviewed 49 contract actions at both GovWorks and SWB; of those actions, 24 required legal reviews. We found that 10 had no legal review performed and that the remaining contract actions had what appeared to be limited or cursory reviews performed. Documentation of legal reviews often consisted of only a solicitor's signature or e-mail correspondence in which the author implied a legal review was performed. A GovWorks May 2006 memorandum interpreting the legal review policy indicates that legal reviews will not be required for orders from the Federal Supply Schedule or other orders issued under multiple-award contracts, such as the items in our sample. Given the seriousness of the contracting problems presented in our audit report at both GovWorks and SWB, we believe it would be in DOI's best interests to ensure that adequate legal reviews are performed on all contract actions as required by DOI policy.

Price Reasonableness Determinations

For more than half of the 49 contracting actions we reviewed (25 actions or 51 percent), contracting officials failed to adequately document and support that the prices paid, especially for contracts for services, were fair and reasonable. Contracting officials relied on e-mailed statements or cursory reviews from the DOD requesting offices as their primary basis for price reasonableness determinations instead of documenting a detailed analysis of the contractor's proposed costs. Contracting officials also accepted independent government cost estimates developed by DOD requesting activities that did not adequately explain the bases used for the cost estimates. Further, for 19 service contracts, contracting officials apparently relied on inadequate technical evaluations of contractor proposals. For example, the technical evaluation for one order consisted of a Memorandum of Record stating:

The technical evaluation of the RFQ for the employ of instructors, admin, IT, armorers, and Logistics Warrior personnel for employment at the QMC&S was acceptable. Award the contract to [Contractor].

Clearly the responsibility for providing technical information to the contracting officers rests with the DOD components that request the products or services. However, the contracting officers had a responsibility to ensure that the prices paid were reasonable and represented a good value to the U.S. Government. Contracting officers should have required additional information and documentation to support their contracting decisions.

Organizational Conflict of Interest

SWB awarded contracts to the Chickasaw Nations Industries, Inc., (CNI) and Chenega Advanced Solutions and Engineering, LLC, (CASE) that created potential organizational conflicts of interest. SWB acquired on-site support services from the two companies while not precluding them from competing for other contracts administered at SWB. Since these contractors were physically located with the employees at the offices of SWB, they were able to gain access to internal files and internal policies, learn procedures, and develop relationships with personnel of the office. The FAR precludes such real or apparent conflicts of interest.

It is the responsibility of the contracting officer to analyze planned acquisitions in order to identify, evaluate, and mitigate potential organizational conflicts of interest before the contract award. The contracting officer should incorporate items, such as clauses restricting the companies from obtaining other contracts, nondisclosure agreements, and notification prior to submitting any proposals, into the contracts. Neither contract contained a clause that restricted the contractors from being awarded another contract by SWB during the term of these contracts, nor were there any mitigation plans formulated.

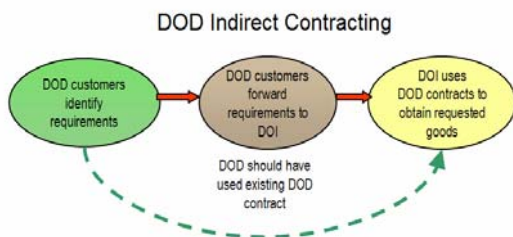
Both contractors had an insider's view of the acquisition office and had the immediate opportunity to gain access to files, systems, and procedures. CNI assisted in the contracting process, which made the potential for organizational conflict of interest even greater. Although SWB required both CNI employees and CASE employees to sign

nondisclosure statements, all the signed statements could not be located. Further, this mitigation step was not enough. SWB failed to mitigate these potential organizational conflicts of interest by taking the steps outlined in the FAR and other guidance. For example, prior to award of the contract it did not:

- get advice from counsel for evaluating potential conflicts,
- develop necessary solicitation provisions, and
- develop necessary contract clauses.

Rulings by the Comptroller General have held that real or apparent conflicts of interest can result in detrimental rulings for the agency when dealing with contractor protests. Failing to mitigate these potential organizational conflicts of interest may have left DOI vulnerable if other bidders had protested an award.

Stewardship



GovWorks and SWB both failed in their responsibilities to act as good stewards of federal resources. When DOI acts as a contracting officer for others, DOI accepts the fiduciary responsibility over spending those funds wisely. DOI failed in its responsibilities to safeguard DOD monies by causing DOD to pay redundant fees. DOI made acquisitions using GSA schedules and existing

DOD contracts that DOD could have accessed directly. DOI contracting officers should have advised DOD of the existence of GSA schedules and existing DOD contracts. When DOI uses GSA schedules and DOD contracts for DOD purchases, DOD is paying unnecessary fees. For example, in FY2005 DOI purchased 36 percent of its DOD requests (valued at \$592 million) from the GSA supply schedule. For these awards, DOI charged DOD as much as a 4 percent fee (\$22.8 million) in addition to the GSA fee. The excess fees of \$22.8 million could have been saved or put to better use. For example, had DOD gone directly to GSA and saved the cost of DOI fees, it could have used these monies to help fund the war in Iraq.

Management Oversight

DOI management did not provide sufficient oversight to its contracting centers conducting business on behalf of other government agencies. Previous audit reports and management reviews had identified significant problems with these contracting activities, but corrective action was not implemented or was not effective. We provide examples below.

- In April 2005, GAO reported insufficient management oversight and a lack of adequate training by SWB. As a result, GAO found that DOI:
 - did not comply with competition rules,

- did not ensure best value for the U.S. Government, and
 - did not adequately monitor contractor performance.
- In July 2005, GAO reported that GovWorks did not always ensure fair and reasonable prices when procuring goods and services.
- In July 2004, DOI OIG reported SWB awarded task orders for interrogators against existing GSA blanket purchase agreements awarded for information technology and professional engineering disciplines, such as network services and electrical, mechanical, and chemical engineering services. This occurred because SWB lacked:
- effective policies, procedures, and process controls and
 - monitoring and oversight by DOI management.

In addition, DOI Management Reviews have identified similar problems. In April 2003, DOI management 1) identified a lack of both consistent policy and legal review and 2) reported that contracting officers did not always ensure prices were fair and reasonable.

Despite the numerous external and internal reviews identifying similar issues, our audit found the same problems.

As further evidence of management's lack of concern over the operations of these acquisition centers, they have nonconcurrent with recommendations to establish performance measures for these activities. On the last three audits of the financial statements, KPMG (DOI's independent public auditor) recommended DOI establish performance measures for GovWorks and SWB. KPMG made these recommendations based, in part, on the magnitude of these operations — in FY2005 these centers processed \$1.7 billion for orders for DOD. Further, DOI relies on these activities to reduce operating costs through economies of scale and uses retained earnings to supplement DOI programs. In its response, however, DOI management indicated that measuring the performance of these activities was immaterial to DOI, as they do not represent DOI's core mission.

DOI Actions

Based on our conclusions and concerns, DOI took action to assess the status of contracting procedures at SWB, including temporarily revoking contracting officers' warrants. Using industry specialists and in-house experts, NBC designed an evaluation plan to assess contracting officers' knowledge and skills. It has completed this evaluation and provided the Director, Office of Acquisition and Property Management, with recommendations on which warrants to reinstate. They have also identified training needs for certain contracting officers and some of this training has already occurred.

In addition, DOI has reported to the Director, Defense Procurement and Acquisition Policy, that it has detailed guidance and checklists established to address several of the contract

administration issues identified by the audit. This guidance includes checklists for price reasonableness determination procedures, legal review requirements, and expanded requirements for documentation of independent U.S. Government cost estimates.

As noted in previous sections of the report, DOI had taken the OMC system offline on March 3, 2006. Subsequently, the contract expired, and, at the time our audit report was issued, DOI did not plan on using the OMC as a procurement tool in the future. Further, DOI continues to research and evaluate potentially expired FY2005 and earlier funds that remained on its books at the beginning of FY2006 and has stated it is in the process of resolving the issues noted.

In its November 30, 2006 response, the Assistant Secretary for Policy, Management and Budget concurred with Recommendations 1, 2, 3, 7, 8, 9, and 10 and did not concur with Recommendations 4, 5, and 6. We have summarized the responses to the individual recommendations and provide our analysis of those responses below.

Recommendations

1. Evaluate potentially expired funds in DOI's possession and return any expired funds to the appropriate agency.

DOI Response

DOI concurred with our recommendation to evaluate potentially expired funds in its possession and return any expired funds to the appropriate agency. DOI stated it will continue to evaluate the status of client funds that have not been re-obligated to determine whether such funds should be returned to the appropriate agency. Further, DOI stated the Interior Franchise Fund (IFF) is authorized to retain and re-obligate funds under certain circumstances.

OIG Analysis of DOI Response

While we acknowledge that the Department has initiated actions to address this recommendation, further analysis and action is still needed. Funds that were not properly obligated by the ordering agency because of lack of specificity or a bona fide need and were accepted by the contracting office must be returned to the requesting agency if their period of availability has expired.

2. Research and resolve any violation of the bona fide needs rule. If funds from the correct fiscal period are not currently available to cover the obligation, take steps necessary to determine whether a violation of the ADA occurred.

DOI Response

DOI concurred with our recommendation and is actively researching the transactions in question. DOI will refer any potential violations of the bona fide needs rule for further investigation by the ordering entity. An ADA violation would only occur if it is

determined that an obligation was made to the wrong fiscal year appropriation and that the appropriation account that should have been properly charged did not have enough money to permit an adjustment. It is premature to equate improperly charging an unavailable appropriation with violating the ADA before it is definitely known there is insufficient funding in the proper appropriation to make an adjustment.

OIG Analysis of DOI Response

As mentioned in the recommendation, the OIG understands that not all bona fide needs rule violations will lead to ADA violations. The OIG is concerned with the violations in which funds from the correct fiscal period are not available. We acknowledge the Department has made progress in this effort and encourage the Department to conduct further research and analysis.

3. Implement controls to ensure a bona fide need is established before accepting a purchase request.

DOI Response

DOI concurred with our recommendation and is in the process of revising the procedures for accepting funds. Quality controls to improve procedures are currently being drafted.

OIG Analysis of DOI Response

We recognize that the Department is drafting quality controls to improve procedures for accepting funds. It is of the utmost importance that these procedures specifically address measures to ensure a bona fide need is established before a contracting office accepts the funds.

4. Notify CIFA and SBA that the contract is likely void because of the lack of authorization to lease space, and pursue actions to remedy this unauthorized commitment.

DOI Response

DOI nonconcurred with our recommendation. The Department fundamentally disagrees with our conclusion that this contract to obtain office space is a sub-lease. Further, the Department states that CIFA's director and the Department of Justice Foreign Terrorist Tracking Task Force's chief counsel had advised DOI that consolidating and co-locating contractor space was within CIFA's authority.

OIG Analysis of DOI Response

We have reviewed the information provided by the Department. However, the Department did not provide any information that changed our conclusions. The OIG will take appropriate steps to have this issue addressed by GAO.

5. Discontinue payments to TKC for the void contract if it cannot be corrected or ratified.

DOI Response

DOI nonconcurred with our recommendation.

OIG Analysis of DOI Response

The OIG will take appropriate steps to have this issue addressed by GAO.

6. Take steps necessary to determine whether an ADA violation related to the TKC contract occurred.

DOI Response

DOI nonconcurred with our recommendation.

OIG Analysis of DOI Response

The OIG will take appropriate steps to have this issue addressed by GAO.

7. Evaluate any ongoing contract actions awarded through the OMC to ensure validity and take appropriate corrective actions as necessary to complete or close those contract actions.

DOI Response

DOI concurred with the recommendation and has already implemented corrective actions.

OIG Analysis of DOI Response

While the Department has been responsive to this finding from the beginning, the OIG encourages the Department to research the remaining open contracts and expeditiously close these contracts.

8. Implement policies and procedures to ensure contracting actions comply with acquisition laws, regulations, and rules.

DOI Response

DOI concurred with our recommendation and has taken steps or plans to take steps to address the recommendation. These include standard checklists, additional training for contracting officers (including section 803 for DOD ordering activities), updated policies for DOI legal reviews, guidance for performing independent government cost estimates, emphasis and training on price reasonableness and cost analysis documentation, inclusion

of organizational conflict of interest clauses in contracting activities, implementation of independent quality reviews, establishment of a performance assessment and improvement team, and implementation of annual acquisition management reviews.

OIG Analysis of DOI Response

The Department has taken or is in the process of taking steps to address this recommendation.

9. Require DOI procurement officials to certify policies and procedures are established and implemented to correct identified deficiencies at GovWorks and SWB.

DOI Response

DOI concurred with our recommendation, and NBC will develop a corrective action plan to establish timeframes and accountability for ensuring that policies and procedures are established and implemented.

OIG Analysis of DOI Response

The Department has stated that NBC will develop an action plan. While this is a start, continued acquisition management reviews must be conducted to ensure these policies and procedures, in fact, correct the deficiency and are implemented.

10. Establish policy and provide training on the fiduciary responsibilities of contracting for others.

DOI Response

DOI concurred with this recommendation.

OIG Analysis of DOI Response

While the Department has concurred with our recommendation, the OIG could not discern from the reply the Department's current corrective actions in the area. However, the Department has agreed to establish policy and provide training on the fiduciary responsibilities of contracting for others.

Based on the response, we consider Recommendations 4, 5, and 6 unresolved and need additional information regarding Recommendations 1, 2, 3, 7, 8, 9, and 10. We are asking the Assistant Secretary to reconsider Recommendations 4, 5, and 6 and to provide a written response to this report by February 9, 2007, that supplies the information requested in Appendix 3.

Our draft report included appendices containing details of the specific contracting actions we reviewed and the potential deficiencies identified for each contracting action. We provided that

level of detail to facilitate DOI's review and response to our draft report. For the sake of brevity in the final report, we have not included this detailed information.

In addition, DOI's response is lengthy (46 pages) and contains information that is not responsive to our report. Again for the sake of brevity, we have not included DOI's entire response in the report. We summarized the response by area and provide that summary and our analysis of the response in Appendix 4.

The legislation, as amended, creating the Office of Inspector General requires that we report to Congress semiannually on all audit reports issued, actions taken to implement our audit recommendations, and recommendations that have not been implemented. We appreciate the cooperation shown by Interior bureaus during our review. If you have any questions regarding this report, please call me at 202-208-5745.

OBJECTIVE, SCOPE, AND METHODOLOGY

The objective of the audit was to determine whether the purchases of goods and services made by the Department of the Interior (DOI) on behalf of the Department of Defense (DOD) were made in accordance with applicable laws and regulations. Specifically, we reviewed individual contracts to determine whether DOD clearly defined requirements and used proper funding and whether DOI followed the Federal Acquisition Regulation and Defense Federal Acquisition Regulations while providing contracting services to DOD. We conducted our audit from August 2005 to October 2006.

The scope of the audit covered FY2005 procurement actions. We reviewed 49 contract actions valued at \$277.1 million. We judgmentally selected acquisitions at both GovWorks and SWB.

We conducted our audit in accordance with the *Government Auditing Standards* issued by the Comptroller General of the United States. Accordingly, we included such tests of records and other auditing procedures as we considered necessary under the circumstances. Further, the audit was conducted pursuant to requirements under the National Defense Authorization Act for FY2006 (NDAA). To accomplish the audit objective, we reviewed (1) applicable laws, regulations, and policies and (2) documents, including contract actions, contract files, financial reports, and other data applicable to DOI interagency contracting offices. Specifically, we assessed:

- bona fide needs rule compliance,
- contractor performance monitoring,
- competition adequacy,
- price reasonableness determination suitability,
- funds type appropriateness,
- market research requirement compliance, and
- legal review sufficiency.

We interviewed DOI officials and staff of GovWorks, SWB, the National Business Center, and the Office of the Solicitor and DOD representatives of the Office of Acquisition, Technology, and Logistics, the Office of the Comptroller, and various requesting agencies. We coordinated our audit with the DODIG, as required by section 811 of the NDAA.

As part of our audit, we evaluated the system of internal controls to the extent that we considered necessary to accomplish our objective. The internal control weaknesses identified are discussed in the Results of Audit section of this report. If implemented, the recommendations should improve the internal controls.

RELATED REVIEWS

The Government Accountability Office (GAO) and the Office of Inspector General, Department of the Interior (DOI), issued recent reports that were applicable to our audit.

GAO

- July 2006. “Contract Management: DoD Vulnerabilities to Contracting Fraud, Waste, and Abuse” (GAO-06-838R) identified vulnerabilities to contracting fraud, waste, and abuse at DOD due to weaknesses in five key areas: sustained senior leadership, capable acquisition workforce, adequate pricing, appropriate contracting approaches and techniques, and sufficient contract surveillance. Consequently, GAO has had contract management on its list of high-risk areas since 1992.
- April 2006. “Increased Use of Alaskan Native Corporations’ Special 8(a) Provisions Calls for Tailored Oversight” (GAO-06-399) reported that agencies used 8(a) Alaskan Native Corporations (ANC) firms as a quick, easy, and legal method of awarding contracts for any value, while helping meet small business goals. In one contract, GovWorks did not consider any alternatives other than sole-source contracting with the ANC firm because the DOD agency had requested that firm. GAO recommended DOI work with the Small Business Administration (SBA) to develop guidance on how to comply with requirements of the 8(a) program, such as limitations on subcontracting and notification to SBA of contract modifications. DOI, overall, concurred with GAO’s recommendations.
- July 2005. “Interagency Contracting: Franchise Funds Provide Convenience but Value to DoD is Not Demonstrated” (GAO-05-456) reported that GovWorks did not always ensure fair and reasonable prices when procuring goods and services, specifically when requesting that contractors perform additional work. GovWorks, thereby, substantially increased contract values. In many cases, GovWorks did not receive competing proposals. GAO recommended DOI develop procedures for (1) GovWorks to demonstrate compliance with federal procurement regulations and policies and for (2) GovWorks contracting officers to work closely with DOD customers to define contract outcomes and effective oversight methods. DOI concurred with GAO’s recommendations and was currently taking corrective actions.
- April 2005. “Interagency Contracting: Problems with DoD’s and Interior’s Orders to Support Military Operations” (GAO-05-201) reported that a lack of management controls, specifically insufficient management oversight and inadequate training, led to DOI not (1) issuing orders that were within the scope of the underlying contract, in violation of competition rules; (2) complying with additional DOD competition requirements when issuing task orders for services on existing contracts; (3) complying with ordering procedures meant to ensure best value for the government; and (4) adequately monitoring contractor performance. GAO recommended that DOI ensure management reviews of contracting offices emphasize and assess whether contracting officials are trained adequately and ensure

performance measures for contracting officers provide incentives to exercise due diligence and comply with applicable contracting rules and regulations. DOI agreed with all recommendations and was taking corrective actions.

- March 2005. “Contract Management: Opportunities to Improve Surveillance on Department of Defense Service Contracts” (GAO-05-274) found insufficient surveillance on DOD contracts due to lack of (1) documentation, (2) personnel assigned surveillance responsibilities, or (3) required training. GAO recommended DOD provide training, ensure accountability, improve the contract review process, and revise policy on proper use of other agencies’ contracts. DOD, in general, concurred with all of the recommendations.
- January 2005. “High Risk Series: An Update” (GAO-05-207) identifies management of interagency contracting as a new area included in GAO’s list of high risk areas within the federal government. GAO, along with some agency Inspectors General, found instances of improper use of interagency contracts; failure to follow prescribed procedures that ensure fair prices when using schedule contracts to acquire services; and, specifically at DOD, waiver of competition requirements on supply schedule orders due to preference in retaining the services of incumbent contractors. GAO and others believe these deficiencies occurred because of the increasing demands on the acquisition workforce; insufficient training; and, in some cases, inadequate guidance. GAO also points out that the fee-for-service arrangement creates an incentive to increase sales volume in order to support other programs of the agency that awards and administers interagency contracts. This incentive may lead to an inordinate focus on meeting customer demands, at the expense of complying with required ordering procedures.
- July 2002. “Contract Management: Interagency Contract Program Fees Need More Oversight” (GAO-02-734) determined most of the contract service programs reviewed reported an excess of revenues over costs in at least 1 year between FY1999 and FY2001. OMB guidance directs agencies with franchise fund programs to account for and recover fully allocated actual costs and to report on their financial results. Agencies are supposed to identify all direct and indirect costs and to charge fees to ordering agencies based on these costs. DOI agreed the information and recommendations in the report provide OMB helpful guidance for oversight of a growing interagency program.

Office of Inspector General

- March 2006. “Fee-for-Service Organizations, Department of the Interior” (C-EV-MOA-0016-2005) determined the overall benefits of DOI’s fee-for-service operations may not outweigh the risks to the Department. These risks include DOI and other agencies not following procurement laws and regulations and fee-for-service providers sometimes operating without effective controls in their desire to attract customers in a competitive environment.
- November 2005. “U.S. Department of the Interior Annual Report on Performance and Accountability” (X-IN-MOA-0011-2005) identified Procurement, Contracts and Grants as one of its Top Management Challenges. Procurement has historically been an area subject to

fraud and waste government-wide, and managing procurement activities is a continuing challenge requiring constant attention.

- July 2004. “Review of 12 Procurements Placed Under General Services Administration Federal Supply Schedules 70 and 871 by the National Business Center” (W-EV-OSS-0075-2004) found procurements made under the GSA schedule at SWB in Ft. Huachuca, AZ, were out of scope. Factors that allowed these transactions to occur included (1) a lack of effective policies, procedures, and process controls and of monitoring and oversight by NBC management and (2) the inherent conflict in a fee-for-service operation. OIG recommended termination of inappropriate contracts; revision of criteria for the Alternative Management Control Reviews of the acquisition function, to include operations at NBC; and development of policies and procedures to prevent similar actions in the future. DOI management was collaborating with other agencies to correct these deficiencies.

STATUS OF AUDIT RECOMMENDATIONS

Recommendations	Status	Action Required
1, 2, 3	Management concurred with the recommendations; additional information is needed.	Please provide the name and title of the official responsible for completing the corrective action and a planned completion date.
4	Unresolved.	Please provide a written response stating your concurrence or nonconcurrence with the finding and recommendation, the name and title of the official responsible for implementing the recommendation, and an estimated completion date for implementation.
5	Unresolved.	Please provide a written response stating your concurrence or nonconcurrence with the finding and recommendation, the name and title of the official responsible for implementing the recommendation, and an estimated completion date for implementation.
6	Unresolved.	Please provide a written response stating your concurrence or nonconcurrence with the finding and recommendation, the name and title of the official responsible for implementing the recommendation, and an estimated completion date for implementation.
7, 8, 9, 10	Management concurred with the recommendations; additional information is needed.	Please provide the name and title of the official responsible for completing the corrective action and a planned completion date.

DEPARTMENT COMMENTS AND OIG RESPONSES

The following table summarizes the Department’s comments to the draft report and our response:

Department Comment		OIG Response
INTRODUCTION		
The Department response includes a discussion regarding the “unique purpose” of intragovernmental revolving (IR) funds. Its response implies that, when comparing IR funds to other Economy Act interagency activities, a broader interpretation or allowance must be considered as it relates to the usage of year-end balances.	The Department response appears to be an attempt to justify why GovWorks and SWB do not believe they have to comply with relevant contracting laws and regulations.	
The Department response does not address the issue of noncompliance with legal requirements, federal acquisition regulations, and DOD supplemental requirements. Rather, it attempts to justify why GovWorks believes funding does not expire after its period of availability.	Our report states that “neither GovWorks nor SWB complied in full with legal requirements, federal acquisition regulations, and with DOD supplemental requirements.” We provide many specific examples of this noncompliance throughout our audit report.	
The Department response appears to imply that GovWorks and the SWB operate under the same legislation.	SWB actually operates as part of a working capital fund and is subject to the provisions of the Economy Act.	
The Department response cites congressional intent concerning franchise funds (e.g., “Congress was aware that agencies sometimes experience bottlenecks . . .”).	We do not believe congressional intent is as clear as the Department suggests. Our audit criteria consisted of written laws, regulations, and policies.	
INTERAGENCY CONTRACTING AT DOI		
The Department takes issue with the draft report statement that “both GovWorks and SWB receive the majority of purchase	Our report simply states the fact that GovWorks receives more purchase requests in the fourth quarter than it does in the first	

Department Comment	OIG Response
<p>requests in the last quarter of the fiscal year.” Their response implies that the 44 percent of purchase requests received in the fourth quarter is less than the 56 percent of purchase requests received in the first through third quarters, combined. Further, the Department response indicates that the correct percentage of purchase requests received in the fourth quarter is 38 percent, not 44 percent.</p>	<p>quarter, second quarter, or third quarter (not combined). We presented statistics, as provided by GovWorks personnel during our audit fieldwork. Our working papers support the 44 percent statistic.</p>
<p align="center">RESPONSE TO FINDINGS</p>	
<p>Using Potentially Expired Funds</p>	
<p>The Department reiterates its restatement of appropriations law language.</p>	<p>Without context or providing specific examples, this discussion is meaningless.</p>
<p>The Department states that it could not find the statement “that it could extend the availability of limited appropriations and convert these funds to no year appropriations.”</p>	<p>Our report stated that GovWorks had, in the past, advertised that it could extend the use of appropriated funds; it did not quote the advertisement. The advertisement actually stated “Concerned about getting your project awarded before the fiscal year ends? Say Goodbye to ‘use it or lose it.’ With GovWorks projects funds are held in your project account until spent.”</p> <p>This advertisement was discontinued, but the GovWorks Web site continued to include the following question and answer in its FAQ section:</p> <ul style="list-style-type: none"> ➤ Is it true that funds provided to the U.S. DOI franchise fund can be held until expended without regard to fiscal year?

Department Comment	OIG Response
	<p>This is the answer given:</p> <ul style="list-style-type: none"> ➤ Yes. Funds can be held without regard to fiscal year
Potential Advance Obligations	
<p>The Department agrees with our analysis, but states that this “was an isolated case and corrective actions have been taken to prevent any future occurrence.” Further, the Department believes that there was no ADA issue with the referenced IDIQ, because “well over \$1 million of orders were issued within the first seven months of the base year”</p>	<p>SWB obligated the U.S. Government to spend at least \$1 million over 3 years, without adequate contractual protection, regardless of how much ended up actually being spent. At the time the contract was executed, SWB was obligating future-year funds. Further, the Department did not provide documentation of what corrective actions were taken to prevent future occurrences of this nature.</p>
Sub-lease for Counterintelligence Field Activity	
<p>The Department fundamentally disagrees with our interpretation that the “service contract” is a “lease.”</p>	<p>We fundamentally disagree with the Department on this issue. The OIG will take appropriate steps to have this issue addressed by the GAO.</p>
Internet-Based Electronic Storefront	
<p>The Department reiterates our finding relating to the OMC.</p>	<p>The Department response did not address our report conclusion regarding the OMC, which stated the OMC was established without the necessary approvals and lacked adequate internal controls.</p>
Contract Administration Issues — Legal Reviews	
<p>The Department takes the position that it relies on the DOI Office of the Solicitor as to the “form and substance of legal reviews.” It also</p>	<p>The Department response does not address the concerns raised in our report. We will have an opportunity to assess the adequacy</p>

Department Comment	OIG Response
states that there has been onsite legal counsel at SWB since 2004 who works with contracting personnel. The Department said it has also recently re-issued its legal review policy and has stated it has issued additional policy regarding legal reviews.	of these policies during our follow up audit.
Contract Administration Issues — Price Reasonableness Determinations	
<p>The Department concurred with our finding relating to the lack of adequate support for prices paid on some of the contracts we reviewed and stated that it had provided additional training and instituted other procedures to correct this problem.</p> <p>However, the Department took issue with some of our opinions regarding the adequacy of the documentation actually contained in the contracting files.</p>	Our audit report accurately presents our findings, and we will have an opportunity to re-assess this issue during our follow up audit.
Contract Administration Issues — Organizational Conflicts of Interest	
In its response, the Department cites the FAR § 9.5 and implies that no violation has occurred yet because no awards for which the onsite contractors had bid had been awarded. The Department says that all necessary precautions to mitigate any conflicts of interest will be taken prior to any contracts being awarded. However, the response also states that policies and procedures relating to organizational conflicts of interest have been modified and strengthened.	Our audit report accurately presents our findings, and we will have an opportunity to re-assess this issue during our follow up audit.
Stewardship	
The Department response presents a lengthy assertion that our analysis of this issue is oversimplified and flawed. The Department cites	While the Department response presents some valid arguments, we maintain our position that there may be instances when

Department Comment	OIG Response
<p>several examples of when it may be appropriate for an agency to utilize its services for routine contracting actions. In addition, GovWorks uses this opportunity to tout its services and expertise, which we did not question in our report.</p>	<p>DOD could directly perform its own contracting functions using GSA schedules and existing DOD contracts and save the service fee charged by GovWorks. Our finding that DOD may have paid as much as \$22.8 million in unnecessary fees is still valid and supported. The Department response did not directly address this issue.</p>
<p>Management Oversight</p>	
<p>The Department response states that both GovWorks and SWB have undergone substantial changes and reorganizations since prior audits cited in our report were conducted and cites details of those changes.</p>	<p>The exact progress the Department has made will be determined when we conduct our follow up audit.</p>

Report Fraud, Waste, Abuse and Mismanagement



Fraud, waste, and abuse in government concerns everyone: Office of Inspector General staff, Departmental employees, and the general public. We actively solicit allegations of any inefficient and wasteful practices, fraud, and abuse related to Departmental or Insular area programs and operations. You can report allegations to us in several ways.



By Mail:

U.S. Department of the Interior
Office of Inspector General
Mail Stop 5341 MIB
1849 C Street, NW
Washington, D.C. 20240

By Phone:

24-Hour Toll Free 800-424-5081
Washington Metro Area 703-487-5435

By Fax:

703-487-5402

By Internet:

www.doioig.gov

Revised 07/06