



**U.S. Department of the Interior
Office of Inspector General**

Audit Report

Department of the Interior



Hall of Nations – The Tribes the Office of Special Trustee Serves

Chavarria, Dunne, and Lamey LLC Contract Deliverables

Report No. Q-CX-MOA-0005-2006

June 2008



United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, D.C. 20240

JUN 27 2008

Memorandum

To: Secretary Kempthorne

From: Earl E. Devaney
Inspector General

Subject: Transmittal of Report of Investigation, Audit Report and Management Advisory:
Chavarria, Dunne & Lamey, Office of Special Trustee Contractor

In May 2006, the Office of Inspector General (OIG) issued a Report of Investigation concerning allegations of improper relationships between senior Office of Special Trustee (OST) officials and the principals of Chavarria, Dunne & Lamey (CD&L), a contractor for OST (copy attached). What we found was that over a period of years, OST awarded and continued to extend and expand, without competition, a contract with CD&L for trust fund accounting and risk management services, while the three most senior ranking officials in OST engaged in extensive outside social activity with the executives of CD&L. This activity included the exchange of gifts of meals and drinks, taking out-of-town trips to a major golf event, playing golf together on almost a weekly basis, and exchanging hospitality at personal residences. We also found that OST contract personnel felt pressured by these senior OST officials to continue to award work to CD&L. The appearance of preferential treatment in this case was palpable.

We directed the Report of Investigation to Chief of Staff, Brian Waidmann, for whatever administrative action was deemed appropriate. We also recommended a thorough review of both the performance of the CD&L contracts as well as any pending or future awards to CD&L.

Almost immediately after your arrival as Secretary of the Interior, the Special Trustee issued letters of reprimand (to be retained in the officials' OPF for one year or less) and directed the three senior officials to take some additional ethics training, presumably, without your knowledge.

Since we expected to see little, if any, further action by OST concerning the CD&L contracts, we launched an audit to determine the quality and timeliness of CD&L contract deliverables, and to review sole-source awards to CD&L. While we concluded this audit in April 2007, we suspended the issuance of a report until our investigation into several other allegations of impropriety concerning OST officials and review of CD&L contract awards and deliverables could be completed.

With this memorandum, I am transmitting the Audit Report, Report of Investigation and our Management Advisory (stemming from our review) concerning these various concerns to you.

In short, our audit found that CD&L has been the beneficiary of "time and material" contracts which are so poorly written and monitored that contracting officials were unable to substantiate that deliverables were received. We found one contract in which CD&L was fully paid without providing all deliverables, and we found pervasive irregularities in sole-source contracting.

Our review of the pre-award process for a contract awarded to CD&L revealed that OST did not plan its contract requirements adequately or timely; the National Business Center made errors on the contract; and the contractor incorrectly billed improper labor categories.

Our investigation determined that allegations received in 2006 concerning CD&L's failure to produce required deliverables were unsubstantiated. However, our investigation also revealed that one of the same three senior OST officials continued to improperly influence the award of contracts to CD&L, and a perpetuate pattern of preferential treatment toward CD&L that, if allowed to continue, will ensure that CD&L (and its acquiring company Clifton Gunderson) will continue to win even competitive OST contracts *in perpetuity*, as "past performance" (which applies only to CD&L) is being considered significantly more important than price. In the most recent award, the lower bidder recommended by an evaluation team lost the contract to CD&L (dba Clifton Gunderson) when the recused official urged the evaluation team to reconsider CD&L as a local company and as having experience. It appears that no amount of ethics training will bring about lessons learned when it comes to the relationship of OST officials to this particular contractor.

Considered separately, these individual reports may not warrant severe administrative action. But considered together, the continuous awarding of contracts to CD&L perpetuates permanent preferential treatment and creates an air of impropriety that generates a stream of seemingly endless allegations. Absent meaningful corrective action, the OIG will be continuously called upon to investigate these issues. We cannot continue to dedicate our scarce resources to a problem that rebuffs solution.

Frustrated by a lack of accountability in this regard, I bring these matters to your direct attention and urge you to ensure that appropriate action is taken to rectify the conduct of OST officials and restore the integrity of the OST contracting process.

We would appreciate a written response from the appropriate officials to these reports outlining their intended action, particularly in response to the recommendations contained in the Audit Report, and the suggestions contained in the Management Advisory. We would also like to be advised of any corrective administrative action taken in response to these reports.

If you have any questions regarding any of these reports, please do not hesitate to contact me at (202) 208-5745.

Attachments

EXECUTIVE SUMMARY

DOI COULD NOT CONSISTENTLY DEMONSTRATE IT RECEIVED FULL VALUE FOR MONEY SPENT OR SUBSTANTIATE THE RECEIPT OF TIMELY AND QUALITY DELIVERABLES ON CD&L CONTRACTS.

WHAT WE FOUND

The Department of the Interior (DOI) could not consistently demonstrate that it received full value for money spent or substantiate the receipt of timely and quality deliverables on contracts with Chavarria, Dunne & Lamey LLC (CD&L). The Office of Inspector General (OIG) made this determination after reviewing 8 of the 14 CD&L contracts with various Departmental agencies. In most contracts we reviewed, either records were not available for our evaluation or the contracts contained ill-defined requirements or the contracts were insufficiently monitored.

We found:

- Four cases, totaling approximately \$5 million, where DOI could not demonstrate that it received full value for money spent on contracts with CD&L because the contracts contained ill-defined requirements or were insufficiently monitored.
- Two cases, valued at \$201,764, where DOI could not substantiate the receipt of timely and quality deliverables from CD&L.

DOI suffered an increased vulnerability to waste because most CD&L contracts were time-and-materials contracts in which DOI paid CD&L based on its level of effort rather than completion or progress toward completion of defined contract deliverables. Time-and-materials contracts are the least desirable contracting type because they provide no positive profit incentive to the contractor to control costs or promote labor efficiency. In three cases, we found that DOI did not properly document its determination and findings that no other contract type was suitable. In two of these contracts, we concluded that the use of time-and-materials contracts was inappropriate.

We found that when using time-and-materials contracts, DOI did not always sufficiently describe the scope of work for the contractor to perform. Additionally, DOI did not provide adequate government oversight over the contractor's performance to give reasonable assurance that the contractor was using efficient methods and cost controls. We found the following deficiencies in monitoring of CD&L contracts:

WHY WE DID THIS AUDIT

We decided to audit DOI contracts with CD&L after the OIG received allegations that CD&L was paid for deliverables not received. These allegations followed publication of the OIG Office of Investigation's May 2006 report concerning senior OST officials.

Our audit objective was to determine the timeliness and quality of CD&L contract deliverables. We expanded work to address sole-source contract awards to CD&L.

- Contracting officials failed to track CD&L’s progress toward completion of deliverables as part of contract monitoring.
- On one contract, contracting officials failed to enforce contract provisions that would have allowed for better monitoring of CD&L’s progress in completing deliverables.
- In the absence of clearly defined contract deliverables, CD&L provided “deliverables” based on responses to specific requests from departmental personnel. In many cases, these requests inappropriately came from personnel other than the contracting officer and contracting officer’s technical representative (COTR).
- Department personnel did not timely review contract deliverables, resulting in additional delays.
- Contracting officials told us they felt pressured by senior managers to continue to award work to CD&L and to approve invoices without review or validation. For example, one COTR told us that a senior OST manager had directed the COTR to “simply approve the CD&L invoices without reviewing them” and to “not ask any questions.”

During our audit, we found inappropriate sole-source awards of work to CD&L. While the Federal Acquisition Regulation (FAR) allows the award of sole-source contracts, contracting officers must justify them in writing and obtain required approvals. Our audit disclosed:

- Three sole-source contracts with incomplete, unsupported, or missing justifications.
- Additional work improperly sole-sourced by modifying an existing contract. The contract was modified 57 times, increasing its value from \$150,000 to approximately \$6.6 million (a 4,300 percent increase) and extending the period of performance by over 5 years.
- A contract awarded to CD&L largely because it was the “incumbent contractor,” despite having received a significantly less expensive proposal from an acceptable bidder with a comparable technical score.

Because of the issues we found, we referred one OST contract to our Office of Investigations and initiated a Department-wide audit on sole-sourced contracts.

In its response to our draft report, DOI disagreed with our overall conclusions regarding deliverables associated with the CD&L contracts and the use of sole-source contracts. DOI stated that it received and continues to use many quality deliverables received as a result of the contracts reviewed and that the contractor was paid for hours expended to produce those deliverables. With its response, OST provided a significant volume of documentation on CD&L contracts that we reviewed before preparing this final report. This documentation supported that CD&L did perform work on these contracts and task orders. However, our overall conclusions remain that (1) DOI could not consistently demonstrate that it received full value for money spent; (2) DOI could not consistently substantiate the receipt of contract deliverables; and (3) we

could not always determine what was to be delivered by the contractor because of ill-defined contract requirements.

DOI also asserted that sole-source work given to CD&L was properly awarded in accordance with the FAR. We stand by our original conclusions concerning sole-source contracting. DOI provided a list of improvements implemented over the last 2 years. However, these controls were not in place during the time frame of contracts we reviewed and, therefore, we did not test their effectiveness. A summary of management's comments and our responses are included in Appendix 6.

The issues addressed in this report occurred because of the failure of contracting officers and COTRs to execute their responsibilities. This failure resulted in a contracting environment that lacked adequate controls and accountability, exposing DOI to an unacceptable risk of fraud and waste. Our report provides seven recommendations to address the issues we found. DOI did not concur with Recommendation 3 in the draft report and we modified the recommendation based on management's comments. DOI partially concurred with recommendation 5 and concurred with the remaining recommendations.

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INTRODUCTION

This report presents the results of our audit of certain Department of the Interior (DOI) contracts with Chavarria, Dunne & Lamey LLC (CD&L). The objective of our audit was to determine the timeliness and quality of CD&L contract deliverables. We expanded the scope of work to address contracting issues that came to our attention, including inappropriate sole-source contracting activities.

BACKGROUND

The American Indian Trust Fund Management Reform Act of 1994 (Public Law 103-412) created the Office of the Special Trustee for American Indians (OST) to improve the accountability and management of Indian funds held in trust by the U.S. Government. OST has used contractors to perform many of its trust reform activities. In fiscal years 2004 and 2005, OST allocated approximately \$89.7 million, or nearly 21 percent, of its appropriated funds to contracting.

In May 2006, the Office of Inspector General (OIG) released an investigative report titled “Allegations Concerning Senior Officials of the Office of the Special Trustee for American Indians.” This report concluded that senior OST officials had created an appearance of preferential treatment toward CD&L by socializing, exchanging gifts, and exerting pressure on OST contract staff. As part of that investigation, OIG investigators found that OST awarded — without competition — approximately \$6.6 million in contract work to CD&L. Specifically, OST awarded a 1-year contract to CD&L for \$150,000 and then modified the contract more than 50 times, which increased its value to over \$6.6 million. After issuing this report, the OIG received allegations that CD&L was paid for deliverables that were never provided.

Because of the issues raised by the Office of Investigations and the continuing allegations, we conducted an audit of DOI contracts with CD&L. We identified 14 contracts, totaling approximately \$44.6 million that DOI awarded to CD&L from September 1999 to September 2006. We include a complete list of contracts in Appendix 4, which reflects eight contracts with OST, three contracts with the Office of Historical Trust Accounting (OHTA), and three contracts with the Bureau of Indian Affairs (BIA).

OST, BIA, the National Business Center (NBC), and GovWorks contracting officers issued and administered these contracts. NBC and GovWorks are entities within DOI that provide contracting services. A wide selection of contract types is available to provide flexibility in acquiring the variety and volume of supplies and services required by Departmental agencies. Contract types are grouped into two broad categories:

- **fixed-price**, where the contractor has full responsibility for performance costs and resulting profit or loss and

➤ **cost-reimbursement**, where the contractor has minimal responsibility for performance costs and the profit is fixed.

The latter category includes time-and-materials contracts where contractors are paid for materials at cost and for direct labor hours at specified, fixed hourly rates. Time-and-materials contracts may be used only (1) when it is not possible to accurately estimate the extent or duration of the work or to anticipate costs with any reasonable degree of confidence; and (2) after the contracting officer determines that no other contract type is suitable.

Contracting officers are required to promote full and open competition in the award of contracts, which ensures that the U.S. Government receives the best value for its money. The contracting officer's technical representatives (COTRs) are responsible for monitoring deliverables to ensure they are of sufficient quality and are received on time. The COTRs work with contracting officers to oversee contractors.

In certain situations, contracting officers may award contracts without competition. Such contracts are referred to as sole-source awards and may be used when only one source exists that can meet requirements or when an unusual and compelling urgency exists. Contracting officers must justify any sole-source award decision in writing and obtain prior approval.

RESULTS OF AUDIT

DOI could not consistently demonstrate that it received full value for money spent or substantiate the receipt of timely and quality deliverables on contracts with CD&L. In most contracts we reviewed, either records were not available for our evaluation or the contracts contained ill-defined requirements or the contracts were insufficiently monitored. Additionally, because OST inappropriately used time-and-materials contracts, it was exposed to unnecessary levels of risk. We also found that contracting officials improperly awarded sole-source work to CD&L. All of these issues occurred because contracting officers and COTRs failed to adequately execute their responsibilities.

RECEIPT OF CONTRACT DELIVERABLES

OST stated that it received, and continues to use, many quality deliverables received as a result of the contracts we reviewed and that the contractor was paid for hours expended to produce those deliverables. We do not dispute that CD&L worked on these contracts and task orders. However, our overall concerns were that (1) DOI could not consistently demonstrate that it received full value for money spent; (2) DOI could not consistently substantiate the receipt of contract deliverables; and (3) we could not always determine what was to be delivered by the contractor because of ill-defined contract requirements.

DOI Could Not Demonstrate Full Value for Money Spent

We found four cases where DOI could not demonstrate that it received full value for money spent on contracts with CD&L because the contracts contained ill-defined requirements or were insufficiently monitored.

- **Contract CMK99000001 task order 9:** In September 2001, CD&L was awarded this \$1.2 million time-and-materials task order to complete 13 desk operating procedures (DOPs) for OST. Ultimately, OST allowed the task order to expire in September 2004 after paying CD&L \$887,840. We found no evidence that CD&L performed any work on 5 of the 13 DOPs in the 3 years the task order was active. Additionally, while we found evidence that CD&L worked on the remaining eight DOPs, we could not substantiate that CD&L delivered acceptable final products for any of the DOPs. At least three of these eight DOPs were not completed under this task order because OST later contracted with CD&L again to complete them.
- **Contract NBCTP040428:** In September 2004, CD&L was awarded this \$277,675 time-and-materials contract to complete two DOPs¹ for OST that had not been completed under contract CMK99000001 task order 9. In January 2005, the contract was amended to include development of a third DOP and to increase the price by \$50,000 to \$327,675. Ultimately, OST terminated the contract “for convenience” in April 2005 after paying CD&L the full \$327,675 contract amount plus an additional \$20,000 in close-out costs.

¹ Two of the thirteen DOPs under contract CMK99000001 task order 9 were combined into one DOP. As a result, these two DOPs actually represent the three DOPs we know were not completed under task order 9.

At contract termination, CD&L had delivered only one of the three DOPs. OST prepared a \$400,000 requisition to modify the contract so CD&L could complete the DOPs, but then decided to cancel the requisition and complete the DOPs internally.

- **Contract CMK99000001 task order 10:** In July 2001, CD&L was awarded this \$2.2 million time-and-materials task order for risk management services. At that time, managers knew only that they wanted to start a risk management program and could not specifically define deliverables. Therefore, the contract included one deliverable to provide materials “as requested” and another to provide “tools.” OST provided us with documentation that supported that CD&L worked on this task order. However, the transmittal documentation supporting this documentation stated that the items provided were in response to specific requests from OST personnel instead of in response to the contract’s stated deliverables. We could not find contract modifications adding these “requests” as deliverables to the contract. Ultimately, OST allowed the task order to expire in December 2003 after paying CD&L over \$2.2 million. In the absence of clearly defined deliverables, we could not assess the contractor’s performance on this task order.
- **Contract SMK00050058:** In January 2005, CD&L was awarded this \$987,426 time-and-materials contract for risk management services. Again, OST provided us with documentation that supported that CD&L worked on this contract. However, the transmittal documentation supporting this documentation stated that the items provided were in response to specific requests from OST personnel instead of in response to the contract’s stated deliverables. We could not find contract modifications adding these “requests” as deliverables to the contract. Ultimately, OST allowed the contract to expire in December 2006 after the paying the contractor over \$1.9 million. In the absence of clearly defined deliverables, we could not assess the contractor’s performance on this task order.

We concluded that DOI could not demonstrate that it received appropriate value for nearly \$5 million spent on these contracts. We classified (1) \$887,840 spent on contract CMK99000001 task order 9; (2) \$1,957,810 spent on contract CMK99000001 task order 10; (3) \$208,837 spent on NBCTP040428; and (4) \$1,935,615 spent on contract SMK00050058 as wasted funds (see Appendix 1).

DOI Could Not Substantiate Receipt of Timely and Quality Deliverables

We found two cases where DOI could not substantiate the receipt of timely and quality deliverables from CD&L.

- **Contract CMK60099013:** In September 1999, CD&L was awarded this \$87,464 fixed-price contract to perform organizational capacity reviews on eight Tribal government accounting systems for BIA. In January 2000, the contract was amended to delete two of the deliverables and to decrease the price by \$21,800 to \$65,664. BIA was unable to provide any documentation that these reviews were completed or the deliverables

provided. Subsequent to the issuance of our draft report, however, CD&L provided us copies of the organizational reviews it had performed.

- **Contract TSPR02REQ57:** BIA could not substantiate receipt of deliverables for this contract because it could not locate the contract file. Because the file was not available for our review, we classified the \$136,100 spent on this contract as questioned costs.

USE OF TIME-AND-MATERIALS CONTRACTS

DOI suffered an increased vulnerability to waste because most CD&L contracts were time-and-materials contracts. Under FAR, the contractor does not have to complete work successfully or provide stated deliverables in order to obtain payment; rather the contractor is paid for the hours devoted to the task regardless of the outcome. The contractor is only required to use its best efforts to provide the requested goods or services (i.e. deliverables) at the stated ceiling price. If the contractor performs work pursuant to the contract, the contractor is entitled to be reimbursed for labor at agreed-upon rates. If the services delivered do not meet the contract requirements and the government exercises its right to have the contractor correct the deficiencies, the government pays the additional labor and material costs, excluding the portion of the labor rate attributable to profit (FAR 52.246-6(f)).

Time-and-materials type contracts are the least desirable contracting type because, according to FAR 16.601(b)(1), they provide no positive profit incentive to the contractor to control costs or promote labor efficiency. FAR 16.601(b) states that a time-and-materials contract type may be used only when it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.

Lack of Clear Scope of Work and Objectives

To limit the risk under time-and-materials contracts, the government should not award a contract or task order unless the overall scope of the effort, including the objectives, has been sufficiently described to allow effective government oversight of the effort. In at least two

cases, the overall scope of the effort, including the objectives, had not been sufficiently described to allow effective government oversight of CD&L's efforts. As discussed previously, OST failed to clearly define deliverables for contract CMK99000001 task order 10 and contract SMK00050058. These large dollar contracts included such vague deliverables as "provide materials as requested" and "provide tools." One COTR associated with the task order told us that the deliverables were "vague" and had to be "inferred."

Lack of Determination and Findings Statements Supporting Use of Time-and-Materials Contracts

FAR states that a time-and-materials contract may be used only after the contracting officer executes a “determination and findings” statement that indicates no other contract type is suitable. We found no “determinations and findings” statement supporting contract CMK99000001 task order 9, contract

NBCTP040428, and contract SMK00050058. Based on the defined deliverables in contract CMK99000001 task order 9 and contract NBCTP040428, we concluded that the use of the time-and-materials contract type was inappropriate and unnecessarily exposed the government to an increased vulnerability to waste. For example, for contract NBCTP040428, the contracting officer wrote that the contract was very well written on what the contractor must complete and the time frames for completion. Therefore, we question why the contracting officer chose a time-and-materials type contract that is to be used only when it is not possible to accurately estimate the extent or duration of the work.

One way to decrease the risks of time-and-materials contracts is to convert to less risky contract types in follow-on efforts. The FAR requires the “determination and findings” statements for follow-on contracts to reflect why knowledge gained from the previous acquisitions could not be used to further refine requirements and acquisition strategies in a manner that would enable purchase on a fixed-price basis. Contracts NBCTP040428 and SMK00050058 were follow-on contracts. In the absence of a “determination and findings” statement, we were unable to evaluate why the contracting officer selected time-and-materials as the best contract type instead of converting them to fixed price.

Inadequate Government Oversight

Because a time-and-materials contract provides no positive profit incentive, the FAR requires appropriate government oversight of contractor performance to give reasonable assurance that efficient methods and effective

cost controls are being used. The government should ensure up-front in its acquisition planning process that it has sufficient resources to manage the time-and-materials contract and that those resources are identified. Our audit demonstrated that contracting officers and COTRs did not employ adequate oversight to protect the government from potential waste and abuse. A lack of appropriate government oversight of contractor performance heightened OST’s exposure to waste in these contracts. We found the following issues related to the monitoring of CD&L’s time-and-materials contracts:

- **Failure to Track Deliverables:** OST often failed to track the contractor’s progress toward completion of deliverables as part of contract monitoring. For example, for contract CMK99000001 task order 10, two OST COTRs stated that they did not consider tracking important because they believed that work was progressing satisfactorily. One said, “No one ever asked me if deliverables were not being delivered; it was never an

issue.” As a result, OST does not have a complete record of what it received for the \$2 million paid on that task order. OST could not substantiate it received completed versions of any of the 13 DOP deliverables under contract CMK99000001 task order 9, contrary to its management’s comments, because it did not track receipt of the deliverables.

- **Failure to enforce contract requirements:** On contract NBCTP040428, the COTR failed to enforce contract provisions that would have allowed him to better monitor CD&L’s progress in completing deliverables. The contract required that CD&L (1) provide a written work plan for each task and phase of work, including an analysis of planned hours by labor category; and (2) submit, as work progressed, biweekly invoices that detailed the time each contractor employee spent on each subtask or phase of work. These contract requirements provided a basis for the COTR to monitor CD&L progress in developing deliverables. However, CD&L never provided the detailed written work plan and did not submit invoices that complied with the contract requirements. As a result, the COTR could not adequately monitor the progress of work. The COTR failed to follow the contracting officer’s instructions to reject invoices when contract terms were not met. Had the COTR enforced contract requirements, he may have detected the lack of adequate progress in preparing the remaining DOPs before OST made full payment on the contract. In its response to our draft report, OST stated that the payments made on this contract were from appropriate invoices in accordance with the contract terms and conditions; however, as described above, the invoices were not in accordance with the contract.
- **Inappropriate Personnel Directing CD&L’s Work.** In the absence of clearly defined contract deliverables, CD&L provided “deliverables” based on responses to specific requests from OST personnel. In many cases, these requests came from personnel other than the contracting officer and were not executed through contract modifications. In our opinion, these requests directed the work of the contractor and should have been documented through contract modifications. FAR 43.102(a) states that “only contracting officers, acting within the scope of their authority, are empowered to execute contract modifications on behalf of the government. Other government personnel shall not – (1) execute contract modifications; (2) act in such a manner as to cause the contractor to believe that they have authority to bind the government; or (3) direct or encourage the contractor to perform work that should be the subject of a contract modification.” Additionally, many of these materials were delivered directly by CD&L to personnel other than the contracting officer or COTR who have responsibility for managing the contract.
- **Lack of timely review of deliverables:** We found that OST’s own review process contributed to contract inefficiencies. The written justification for follow-on contract NBCTP040428 to complete two DOPs stated that delays in the completion of these deliverables on the original task order were the fault of the government. Specifically, OST did not timely review draft deliverables and, in some cases, required CD&L to make changes to DOPs and then later required CD&L to change them back to the way they had previously been. For example, one DOP chapter (approximately 40 pages long) was in

the OST review process for over 7 months.

- **Undue influence from OST management:** Contracting officials told us they felt pressured by senior OST managers to continue to award work to CD&L and to approve invoices without review or validation. For example, one COTR told us that a senior OST manager had directed the COTR to “simply approve the CD&L invoices without reviewing them” and to “not ask any questions.”

The contracting officers and COTRs did not ensure that the contractor made adequate progress toward completing contract deliverables within the contract period and under the price ceiling. In its response to the draft report, DOI stated that there was “no overpayment” because the contractor was paid for a level of effort on a time-and-materials contract and that the COTR approved the level of effort incurred by the contractor. We agree that under a time-and-materials contract, the contractor was entitled to payment based on the hours worked. However, this does not relieve DOI from the requirement to provide appropriate oversight of the contractor’s performance. Lack of adequate oversight can lead to waste and abuse. If DOI determines that the contractor is not making adequate progress it can take steps to encourage the contractor to better perform, or as a last result, terminate the contract to prevent further waste.

One contracting officer told us that the contractor does not actually have to deliver the deliverables as long as they are performing satisfactorily. She stated “We just pay them for time spent working, not to actually produce a specific deliverable.” We question the contracting officer’s ability to determine that the contractor was performing satisfactory in the absence of appropriate monitoring and receipt of the stated contract deliverables. In the absence of effective monitoring, OST paid CD&L in full on time-and-materials contracts in which it did not receive stated deliverables and subsequently issued new contracts with CD&L to complete unfinished work. In one case, CD&L did not even complete the deliverables in the follow-on contract, although it was paid in full.

INAPPROPRIATE SOLE-SOURCE CONTRACTING

We found several instances where DOI inappropriately awarded additional work without the competition required by the FAR. In three cases, OST and BIA sole-sourced contracts to CD&L without adequate justification. Further, additional work was sole-sourced to CD&L by modifying an existing contract to increase its scope. Finally, in one case, CD&L was selected largely because it was the incumbent contractor.

Sole-Source Contracts Were Awarded Without Adequate Justifications

We identified three contracts that were sole-sourced to CD&L without adequate “justifications for other than full and open competition” (JOFOCs). JOFOCs must include sufficient facts and rationale to justify the use of the specific authority cited. While the FAR allows sole-sourcing of contracts, it also requires the contracting officer to:

- justify in writing the requirement for sole-sourcing;

- certify the accuracy and completeness of the justification; and
- obtain required approvals.

The following discussion addresses what we found by contract:

- **BIA Contract CMK60099013.** The JOFOC stated that only CD&L could perform the work because of its accounting experience with Tribal governments. However, the justification disclosed that the work was for attestation services to assist in the evaluation of internal controls. In our opinion, specific experience with Tribal governments was unnecessary, and most public accounting firms with local government audit experience could have performed this work.
 - **OST Contract CMK99000001.** In October 1998, OST awarded CD&L a sole-source contract for professional accounting services. Contract documentation indicated that a JOFOC was signed in October 1998, but the contract file contained no copy of it. Without reviewing the JOFOC, we are unable to determine whether this contract was appropriately sole-sourced. However, in a related contract document signed in December 1998, the contracting officer indicated that OST negotiated directly with CD&L primarily because the company had unique knowledge gained from its previous work for OST.
 - **OST Contract NBCTP040428.** The JOFOC, which had legal sufficiency review documented, stated that CD&L was the only responsible source able to do the work because: 1) CD&L had already started work on the two DOPs from a previous contract; 2) CD&L had become very knowledgeable of Indian trust business practices and the format required in presenting the written procedures; and 3) other contractors would require a lengthy learning curve. OST concluded that CD&L had the technical expertise to continue and that, if required to bring in a new vendor, the effort would be unacceptably delayed, which would result in substantial additional costs. However, per the JOFOC, DOPs are manuals which contain guidelines for the operations of trust financial processes. The JOFOC states that development of a DOP consists of the contractor discussing the financial trust process with OST department representatives and documenting what it is told. In our opinion, development of DOPs is not so unique that only one contractor could perform the work. It may have been more convenient to sole-source the work to CD&L since they had performed the work previously, but this contract should have been awarded through open competition, as required by the FAR.
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Added Work Sole-Sourced Through Contract Modifications

As previously reported in OIG's Investigative Report "Allegations Concerning Senior Officials of the Office of the Special Trustee for American Indians," OST violated the FAR by inappropriately modifying an existing contract with CD&L 57 times as of

September 2005. These modifications significantly increased the contract value from \$150,000 to approximately \$6.6 million (a 4,300 percent increase) and extended the period of performance by over 5 years.

Modifications to contracts are generally made to correct oversights or to address changes in conditions from the original contract. They are appropriate to change administrative information and may be appropriate to add a limited amount of new work to an existing contract. According to the FAR, however, the contracting officer must, in certain cases, determine whether a proposed change can be processed as a modification or whether the issuance of a new contract is required. This determination must be made if a proposed modification alters the scope of the contract, adds significant additional work or funding, substantially extends the period of performance, or incorporates other major changes.

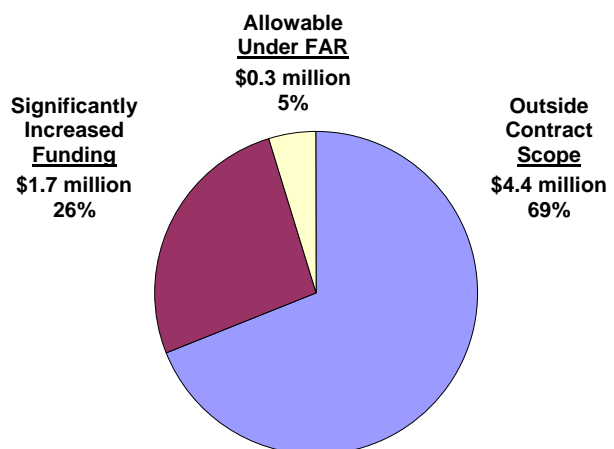
We concluded that only 10 of the modifications, totaling approximately \$300,000 were allowable under FAR. The remaining modifications were not allowable because they were either outside the contract scope (42 modifications valued at approximately \$4.4 million) or significantly increased the contract funding (5 modifications valued at approximately \$1.7 million).

Our analysis shows that 42 modifications, valued at approximately \$4.4 million, were for work outside the original contract scope. NBC and BIA, on behalf of OST, should have awarded this work through open competition.

In one example, modifications totaling \$2.2 million added risk management services to a contract that did not originally include risk management. In 12 of the 42 modifications, OST did attempt to justify added work, valued at \$2.3 million, with JOFOCs. However, under FAR, OST should have awarded the additional work as a separate contract and not as a modification to an existing contract.

Five additional modifications, totaling approximately \$1.7 million, significantly increased the contract funding and, under FAR, should have been awarded as separate contracts. The value of each of these five modifications was larger than the original \$150,000 contract value.

Figure 1. Modifications (in millions) to Contract CMK99000001.



The current NBC contracting officer stated that the contract had been improperly modified before she assumed responsibility for contract administration in January 2004.

**Contract Sole-Source
Awarded Under the Guise
of Competition**

In the case of contract SMK00050058, OST appeared to have a full and open competition but effectively sole-sourced the contract to CD&L. BIA, on behalf of OST, awarded this contract to CD&L largely because it was the incumbent contractor, despite having received a 57 percent lower cost proposal from an acceptable bidder, with a comparable technical score. In addition, the lowest cost bidder met more proposal requirements than did CD&L. We have referred this irregular contract award to our Office of Investigations.

RECOMMENDATIONS

We recommend that the Director, NBC:

1. Require procurement requisitions to clearly define the desired end product or outcome prior to beginning the solicitation process and to ensure contract statements of work are clear, with precisely defined deliverables and detailed contract monitoring plans.

DOI's Response to the Recommendation:

DOI concurred with this recommendation and stated: NBC continues to require OST managers to clearly define the desired end product or outcome prior to beginning the solicitation process. In addition, one of the changes implemented between OST and NBC over the past three years is more effective acquisition planning. The program offices, with the assistance of the OST Chief Contract Liaison, now work directly with the CO prior to the requisitions being submitted to the NBC on any documentation that may need clarification/correction which includes: statements of work, defining deliverables, creating and/or revising monitoring plans, revising invoice requirements, evaluation criteria, and any other phase of the acquisition planning process. This working relationship is maintained throughout the solicitation and award process.

OIG Analysis of DOI Response:

Based on DOI's response, we consider this recommendation to be resolved and implemented.

2. Minimize the use of time-and-materials contracts. When time-and-materials contracts are necessary, NBC should (a) require that contractor work be clearly defined and closely monitored and (b) document a "determination and findings" statement in the contract file.

DOI's Response to the Recommendation:

DOI concurred with this recommendation and stated: Contracting Officers are directed by the FAR to minimize the use of time-and-materials contracts. NBC, with the support of OST Senior Management, has already established additional safeguards to minimize the use of time-and-materials contracts, ensuring the required documentation supports the decision to use such contracts. This recommendation and additional steps have already been implemented. OST has also issued internal guidance where the Principal

Deputy Special Trustee or the Special Trustee must approve use of time-and-materials contracts prior to submittal to NBC.

OIG Analysis of DOI Response:

Based on DOI's response, we consider this recommendation to be resolved and implemented.

3. Ensure that JOFOCs comply with FAR requirements. Additionally, ensure contract modifications are executed in compliance with FAR requirements.

DOI's Response to the Recommendation:

DOI non-concurred with the recommendation in our draft report and stated: Contract modifications are processed in accordance with FAR and the required documentation is maintained in each file. To recommend no contract be modified to sole-source additional work to the incumbent contractor is unrealistic.

OIG Analysis of DOI Response:

Based on DOI's response, we revised the recommendation to clearly state our concern that all modifications comply with FAR requirements. Despite DOI's comments, we still believe that additional controls are necessary over contract modifications to ensure FAR competition requirements are met. In our opinion, if there were sufficient controls in place as DOI suggests, we would not have found the problems we did during our audit. Therefore, we consider this recommendation unresolved.

We recommend that the Special Trustee for American Indians:

4. Require COTRs to adequately document work performed related to contract monitoring and invoice review. In addition, COTRs should ensure that contractors submit invoices in accordance with contract type and billing specifications.

DOI's Response to the Recommendation:

DOI concurred with the recommendation and stated that OST is including review of COTR files as part of its annual administrative program reviews.

OIG Analysis of DOI Response:

We consider this recommendation unresolved. Although DOI concurred, it needs to provide additional information on actions taken or planned, including target dates and titles of officials responsible for implementation.

5. Ensure inexperienced COTRs are not assigned contracts unless a more experienced COTR oversees their work and provides on-the-job training.

DOI's Response to the Recommendation:

DOI partially concurred with the recommendation and stated: COTRs are now required to have 40 hours of training on COTR duties and responsibilities every two years. In addition, OST is including a review of COTR files as part of its annual administrative program reviews.

OIG Analysis of DOI Response:

DOI's proposed action does not address the underlying problem that this recommendation was designed to address - inexperienced COTRs. Some ongoing oversight - on more than an annual basis - over newly certified COTRs is necessary to correct the problems identified in this audit report. Therefore, we consider this recommendation unresolved.

We recommend that the Chief of Procurement, BIA:

6. Ensure all contract files are properly maintained in accordance with document retention policies.

DOI's Response to the Recommendation:

DOI concurred with the recommendation and stated: The Office of Acquisition and Property Management is finalizing the Indian Affairs National Policy Memorandum, *Contract File Location, Organization and Retention*. The policy establishes file location, organization, and retention requirements in a structured and systematic manner for all Indian Affairs procurement offices. The policy is based on guidance contained in the Federal and Departmental acquisition regulations and the Departmental and Indian Affairs manuals. Once the award is made, the contract file will be maintained in a central location readily available for contract administration, review, or audit purposes. Indian Affairs will maintain a perpetual log that will identify whether files are located on the premises or were sent to the American Indian Records Repository or other facility for storage.

OIG Analysis of DOI Response:

Based on DOI's response, we consider this recommendation to be resolved, but not implemented.

We recommend that the Special Trustee for American Indians and the Director, NBC:

7. Take appropriate administrative actions to hold responsible officials accountable.

DOI's Response to the Recommendation:

DOI concurred with the recommendation and stated: OST has moved acquisition management to NBC and, in coordination with NBC, established new acquisition processes. NBC holds contracting staff accountable for ensuring full compliance of contracts. This accountability is one of the elements in contracting personnel's annual NBC performance rating plan and the performance is assessed annually. NBC suspends contracting officer warrants when significant issues surface that questions their ability to issue compliant contracting actions. Once suspended, warrants are not reissued until a rigorous re-certification process is completed.

OIG Analysis of DOI Response:

Based on DOI's response, we consider this recommendation to be resolved and implemented.

SCHEDULE OF MONETARY IMPACT

CONTRACT	WASTED FUNDS*	QUESTIONED COSTS**
CMK99000001 TASK ORDER 9 (PAGE 4) ²	\$887,840	
NBCTP040428 (PAGE 4) ³	\$208,837	
TSPR02REQ57 (PAGE 5)		\$136,100
CMK99000001 TASK ORDER 10 (PAGE 4) ³	\$1,957,810	
SMK00050058 (PAGE 4)	\$1,935,615	
TOTAL	\$4,990,102	\$136,100

*Wasted funds are those funds that cannot be recovered.

**Questioned costs are those funds whose eligibility could not be clearly determined during the audit since the costs were not supported by adequate documentation.

² On contract CMK99000001, we reviewed deliverables associated with only tasks 9 and 10. We did not evaluate the remaining task orders and did not determine what portion, if any, of those contract costs should be classified as wasted or questioned.

³ We assumed that each of the two original deliverables would be worth one-half of the original contract value of \$277,675 or approximately \$138,838 each. We calculated the overpayment by subtracting the value of the one deliverable received (\$138,838) from the total payment on the contract (\$347,675), for the total of \$208,837 wasted.

OBJECTIVE, SCOPE, AND METHODOLOGY

The objective of our audit was to determine the timeliness and quality of CD&L contract deliverables. We applied our objective to both fixed price and time-and-materials contracts with CD&L. However, our conclusions differed based on the type of contract as follows:

- **Fixed Price Contracts:** The government pays the contractor a fixed price for the deliverables identified in the contract regardless of whether the contractor's cost falls short of or exceeds the contract price. To receive payment, the contractor is required to provide the deliverable. When we could not confirm the delivery of identified deliverables on fixed price contracts, we classified payments made to CD&L as "questioned costs."
- **Time-and-Materials Contracts:** The government pays the contractor based on per-hour labor rates as well as reimbursing the contractor for other direct costs such as travel and materials. The contractor is expected to make a good faith effort to meet the government's needs within the ceiling price. If the contractor performs work pursuant to the contract, the contractor is entitled to be reimbursed for labor at agreed upon rates, regardless of whether the contractor provides identified deliverables. If the deliverables do not meet the contract requirements, the government has the right to have the contractor correct deficiencies; however, the government must pay the additional labor and material costs, excluding the portion of the labor rate attributable to profit. When we could not confirm the delivery of identified deliverables on time-and-materials contracts, we classified payments made to CD&L as "wasted funds" rather than questioned costs.

To meet our objective, we:

- asked each DOI bureau for a list of any CD&L contracts it awarded between September 30, 1999, and September 30, 2006;
- searched the Federal Procurement Data System for all DOI contracts where CD&L was a contract party;
- compiled a universe of 14 contracts, with a total value of approximately \$44.6 million, between DOI bureaus and CD&L;
- reviewed FAR requirements for methods of contracting and ordering and determined whether DOI complied with those requirements;
- interviewed appropriate BIA, NBC, OHTA, and OST officials in Albuquerque, NM; Lenexa, KS; Herndon, VA; and Denver, CO; and

- planned to review documents maintained by the contracting officers and COTRs for all 14 identified contracts.

We also gained an understanding and evaluated controls over the identification, tracking and receipt of contract deliverables. We identified lack of contract monitoring by contracting officers and COTRs as a significant internal control weakness. Our findings concerning internal controls are included in the section of the report titled “Inadequate Government Surveillance.” OST and NBC provided us a list of improvements implemented over the last 2 years. However, these controls were not in place during the time frame of contracts we reviewed. Therefore, we were unable to validate their implementation or test their effectiveness during this audit.

After our preliminary review of five of the contracts and learning that three additional contract files were missing, we noted a clear pattern of absent and incomplete documentation that significantly complicated, in many cases, our evaluation of contractor performance. Based on these preliminary results, we chose to end our audit work and report our findings to date. We reviewed the three largest OST contracts; the only BIA contract for which records were available; and the largest OHTA contract.

During our audit, BIA identified three contracts with CD&L, valued at approximately \$183,000, for which it could not locate the contract files. These included: Contract K6002K1413, Contract TSPR02REQ57, and Contract NBCDOP00346. BIA informed us that the contract file for contract K6002K1413 was located after we issued our draft report. OST informed us that NBCDOP00346 was actually an OST purchase order that was available for our review. Given the relative low dollar value of these contracts, we chose not to extend our audit to evaluate these contracts.

Our work was limited to reviewing documentation available from contracting officers, COTRs, and program officials. We did not expand our work to obtain documentation directly from CD&L. However, subsequent to issuance of our draft report, CD&L provided our Office of Investigations with documentation supporting selected deliverables that it provided to DOI. We reviewed the available documentation and modified our conclusions as appropriate.

We expanded the scope of work to include sole-sourcing issues when we learned of inappropriate sole-source awards of work to CD&L.

We performed our audit in accordance with the “Government Auditing Standards” issued by the Comptroller General of the United States. Work was performed from September 2006 to August 2007.

ACRONYMS & ABBREVIATIONS

BIA	Bureau of Indian Affairs
CD&L	Chavarria, Dunne & Lamey LLC
COTR	Contracting Officer's Technical Representative
DOI	Department of the Interior
DOP	Desk Operating Procedures
FAR	Federal Acquisition Regulation
JOFOC	Justification for Other than Full and Open Competition
NBC	National Business Center
OHTA	Office of Historical Trust Accounting
OIG	Office of Inspector General
OST	Office of the Special Trustee for American Indians

CONTRACT UNIVERSE

Contracts Reviewed						
Count	Agency	Contract Number	Contract Amount	Contract Dated	Contract Closed	Scope of Work
1	OST	CMK99000001	\$6,560,179	10/16/98	06/30/05	Provide expert accounting and consulting services to assist and support litigation efforts.
2	OST	NBCTP040428	\$347,675	09/23/04	04/08/05	Complete three DOPs.
3	OST	SMK00050058	\$1,935,615	01/10/05	12/31/06	Provide advice and assistance in development and implementation of comprehensive risk-based management tools and controls.
4	OHTA	40992	\$22,768,146	02/01/05	01/31/07	Perform accounting services for Indian trust account reconciliation, interest recalculation, special deposit accounts, and consultant services.
5	BIA	CMK60099013	\$67,897	09/28/99	03/17/00	Perform six organization capacity reviews.
Contracts Reviewed \$31,679,512						
Contract Files Not Available for Review						
Count	Agency	Contract Number	Contract Amount	Contract Dated	Contract Closed	Scope of Work
1	BIA	K6002K1413	\$9,248	06/13/00	Unknown	Unknown – Contract not available.
2	OST	NBCDOP00346	\$38,015	04/16/01	Unknown	Unknown – Contract not available.
3	BIA	TSPR02REQ57	\$136,100	09/20/02	Unknown	Unknown – Contract file missing.
Contract Files Not Available \$183,363						
Contracts Not Reviewed						
Count	Agency	Contract Number	Contract Amount	Contract Dated	Contract Closed	Scope of Work
1	OST	NBCTC040049	\$175,000	09/30/04	03/31/06	Reconcile and provide adjusting entries to three Indian trust accounts.
2	OST	PO5492	\$2,440	06/20/05	07/30/05	Provide a staff consultant to provide services to transition the Osage processes to OST.
3	OST	NBCF06293	\$19,430	04/20/06	07/14/06	Modify account reconciliation tool to accommodate hybrid record file structure.
4	OST	43678	\$295,567	06/29/05	Still Open	Evaluate the performance of Indian fiduciary activities within DOI.
5	OHTA	41874	\$683,238	01/24/05	01/31/05	Perform accounting services for Indian trust account reconciliation, interest recalculation, special deposit accounts, and consultant services.
6	OHTA	85063	\$11,526,685	12/28/01	12/31/04	Perform accounting services for Indian trust account reconciliation, interest recalculation, special deposit accounts, and consultant services.
Contracts Not Reviewed \$12,702,360						
Total Contracts \$44,565,235						

STATUS OF AUDIT RECOMMENDATIONS

Recommendations	Status	Action Required
1, 2, 7	Resolved and Implemented	No further response to the Office of Inspector General is required for this recommendation.
3, 5	Unresolved	Reconsider the recommendation; provide a written response stating concurrence or non-concurrence; and provide information on actions taken or planned, including target dates and title of the officials responsible for implementation.
4	Unresolved Management concurred; additional information needed	Provide additional information on actions taken or planned, including target dates and titles of officials responsible for implementation.
6	Resolved – Not Implemented	No further response to the Office of Inspector General is required for this recommendation. The recommendation will be referred to the Assistant Secretary for Policy, Management and Budget for tracking of implementation.

DEPARTMENT COMMENTS AND OIG RESPONSES

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

Department Comment	OIG Response
General Comments	
OST stated that original contracting files were removed by OIG Investigations in 2004 and OST was denied the opportunity to copy the files before removal. Additionally, OST stated that the files maintained by OIG Investigations were "completely dismantled and in disarray."	OIG Investigative "Receipt for Documents or Evidence" indicated that all records seized prior to October 24, 2003 were copied by OST between October 24 and October 31, 2003. "Receipt for Documents or Evidence" records dated after October 2003, specifically state "OST made copies of the files before providing them to OIG." Further, OIG maintained the records in the order received from OST.
OST stated that OIG did not avail themselves of OST's audit liaison to facilitate and coordinate interviewing of OST personnel. As a result, OIG did not interview all appropriate individuals.	The audit liaison refused to coordinate with OIG in a manner that would ensure the audit's integrity and independence. The audit liaison insisted on controlling whom OIG could meet with, when interviews could take place, where interviews would occur, and also insisted that an OST representative would attend to oversight the interview. The audit liaison stated that if we did not coordinate through him on these terms then he would provide no assistance. Since COs are the custodians of contract records, we identified appropriate individuals to interview through them.
OST stated that many COs, COTRs, and/or program managers were not interviewed.	We did not review all contracts and/or task orders in the universe. As a result, we did not speak with every CO and/or COTR. Instead, we spoke with COs and COTRs for the specific contracts and/or task orders reviewed and interviewed program officials they directed us to.
OST stated that CO's files do not routinely contain copies of contract deliverables.	The CO is the custodian of the records and, as such, should have documentation supporting receipt and acceptance of deliverables, including specific identification of each deliverable and the date accepted by the government.
OST stated that it received and continues to use many quality deliverables received as a result of the contracts reviewed. Further, the contractor was paid for hours expended to produce quality deliverables received by the government.	<p>Our report does not state that OST received no deliverables and we do not dispute that OST may have received deliverables on some contracts/task orders. Our concerns were that (1) we could not always determine what was to be delivered by the contractor and (2) when we could determine deliverables, records were inadequate to identify what the contractor actually delivered.</p> <p>OST's response acknowledged that it completed at least one deliverable internally. Despite the fact that OST completed the deliverable, the contractor was paid \$20,000 more than the full contract amount. In our opinion, this clearly supports the Report's assertion that the government did not always receive full value on contracts.</p>

<p>OST expressed concern that OIG had not obtained all available documentation. Specifically, OST stated that OIG had not collected documents from all available COs and COTRs and, in one case, declined to review “boxes full of deliverables” related to task order 10 which OIG was informed about during an interview.</p>	<p>We did not review all contracts/task orders in the contract universe. As a result, there may have been deliverables associated with contracts in the universe which we did not request or review. For those contracts/task orders reviewed, we requested all available documentation from the CO as the official custodian of the contract records. Additionally, we requested documentation from COTRs and program officials that the CO directed us to.</p> <p>We spoke with both COTRs assigned to monitor task order 10. The first COTR’s records were included in records previously seized by OIG Investigations. We reviewed those records with her. We were told that, if given time, the COTR may be able to recreate deliverables. The second COTR told us that the deliverables were vague and needed to be inferred. He stated that his files were not organized by deliverable or statement of work and that he did not track deliverables. Instead, he stated he had a “feeling” that things were fine and the work product was satisfactory. Given the vagueness of the deliverable, the COTR’s own assertion that deliverable were “not known” and that he did not track them, we saw no value in reviewing his files and trying to recreate work performed by the contractor.</p>
<p>OST stated that, in June 2007, subsequent to the draft report, it provided OIG copies of deliverables associated with the DOPs and an OST staff explained the documents to OIG.</p> <p>Further, OST stated that based on subsequent review of COTR’s files and discussions with program managers it “easily” located nine boxes of contract deliverables which OST included as Attachment 3 to its response in July 2007.</p>	<p>We independently reviewed the five boxes provided in June 2007. OST declined our request to explain the documents provided. We also reviewed the nine boxes of documents provided as Attachment 3 in July 2007. After reviewing the documentation in these fourteen boxes, we reached the following conclusions.</p> <ul style="list-style-type: none"> ○ <u>Contract CMK99000001 Task Order 9.</u> No documentation was provided for 5 of the 13 stated DOP deliverables. For the remaining 8 DOPs, we saw evidence that the contractor worked and provided numerous drafts. However, we saw no evidence that the contractor delivered, and OST accepted, final versions of the DOPs. We know that 3 of the 8 were not completed because OST later contracted for their completion under contract NBCTP040428. In several cases, we found what appeared to be final DOPs. However, we saw no transmittal documentation indicating they were provided by the contractor and they were all marked as updated since contract expiration. Therefore, we concluded that these documents were not what the contractor delivered. <p>Additionally, without transmittal documentation, it was difficult to validate that documents provided were contract deliverables. For example, the contract was signed in 1999 and the contractor became a business in 1996. However, OST included a document dated 1994 as a contract deliverable. Without a transmittal, receipt, or acceptance document, we were unable to determine how this document was a contract deliverable.</p> <ul style="list-style-type: none"> ○ <u>Contract CMK99000001 Task Order 10.</u> The task order’s stated deliverable was vague. As a result, we could not determine exactly what the contractor was to deliver. Our

	<p>review of the documentation provided supports that the government did receive items from the contractor. However, the transmittal documentation clearly states that the items provided were in response to specific requests from OST personnel, versus in response to the contract's stated deliverable. We did not identify any contract modifications adding the "requested" items as deliverables. Further, we did not find acceptance documentation by the government. As a result, we could not validate that the government received appropriate value for this task order.</p> <ul style="list-style-type: none"> ○ <u>Contract SMK00050058</u>. The contract's stated deliverables were too vague for OIG to accurately determine what the contractor was to deliver. Review of documentation provided supports that the contractor did perform work on this contract. However, neither transmittal nor receipting documents were provided for the major items OST stated were contract deliverables. Further, one document provided clearly stated that OST, and not the contractor, completed the work. Therefore, in the absence of transmittal or receipting documents, we were unable to validate that other documents were indeed delivered by the contractor. <p>We updated the report to include our analysis of this additional documentation.</p>
OST and NBC stated that a majority of issues involve older contracts and relate to past practices which are no longer applicable. A list of improvements implemented over the last 2 years was included as Attachment 2 to its response.	These new controls were not in place during the period of the contracts we reviewed. However, we updated the report to indicate that OST and NBC have asserted that new controls have been implemented which would preclude these conditions from occurring on new acquisitions.
Background	
OST stated that there were actually six OST contracts and four contracts with the OHTA.	In a subsequent fax dated July 30, 2007, OST stated that there were indeed three contracts with OHTA and the fourth contract in question was indeed an OST contract.
OST stated that they also utilized GovWorks and NBC Ft. Huachuca in addition to NBC Denver.	We deleted reference to NBC Denver as sole provider of contract services for OST.
OST and NBC stated that the FAR specifically identifies time-and-materials type contracts in a third distinct category.	While there are a variety of ways that contracts can be categorized, FAR 16.101 states, "The contract types are grouped into two broad categories: fixed-price contracts (see Subpart 16.2) and cost-reimbursement contracts (see Subpart 16.3)."
OST stated that time-and-materials type contract are authorized and used when the deliverables <u>cannot</u> be clearly defined.	FAR 16.601 states that time-and-materials contracts may be used only when it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of confidence. The contract in question had clearly defined deliverables – DOPs.

CD&L Failed to Convey Deliverables	
OST and NBC stated that contract NBCTP040428 was “clearly” a time-and-materials contract. Both acknowledge that an NBC Senior Procurement Analyst did originally incorrectly tell OIG that the contract was a fixed-price contract.	The contract did not designate that it was a time-and-materials contract and we relied on the NBC Senior Procurement Analyst to properly classify the contract. We updated the report to indicate that OST and NBC have since stated that contract NBCTP040428 was a time-and-materials contract. We have also conducted additional analysis of the contract using the correct contract type and have updated our report conclusions accordingly.
OST stated that contract NBCTP040428 was not amended to include a third DOP but to encompass required changes in certain sections of the Disbursing DOP.	The requisition for Modification 1 states that this is a separate DOP for Osage. Modification 1 makes no reference to the Disbursing DOP. Instead, Modification 1 only references a DOP for the Osage Agency.
OST and NBC stated that Contract NBCTP040428 payments were made from appropriate invoices in accordance with the contract terms and condition.	Contract NBCTP040428 required the contractor’s invoices to detail the time each employee spent on each subtask or phase of work. However, the COTR accepted the invoices even though they did not detail the subtask and phases of work.
Poor or Missing Contracting Records Prevented Identification and Evaluation of Deliverables	
OST stated that contract NBCDOP00346, listed as a contract for BIA, was actually a purchase order issued by NBC on behalf of OST.	On October 4, 2006, the Audit Liaison for Indian Affairs, provided a list of BIA procurement actions with CD&L that identified this as a BIA contract. BIA attempted to locate the contract without success. Since BIA originally identified the contract as its own, we did not request the contract from OST. We updated the report accordingly.
OST stated that it had located a copy of NBCDOP00346, and BIA stated it had located a copy of K6002K1413, both of which OIG had reported as missing.	We revised the report to indicate that OST and BIA have subsequently located copies of these contracts.
OST stated that contracts, i.e., terms and conditions, written by NBC were in compliance with FAR.	Our report clearly supports that contracts were so poorly written that we could not tell what was to be delivered. Therefore, we could not tell whether OST received quality deliverables on time.
OST disagreed that contracts were not properly monitored and stated that COTRs and program managers are knowledgeable and aware of deliverables received.	Our report clearly supports that contracts were not properly monitored. As a result, we could not tell whether OST received appropriate value for funds spent. For example, Task Order 9 was for 13 DOP deliverables. OST has stated that since the task order was a time-and-materials contract, the COTR did not need to monitor the contractor’s progress toward completion of task order deliverables. However, payment of \$887,840 of the \$1,204,500 task order total when OST could not support the government received any of the task order deliverables is, in our opinion, excessive. Had the COTR adequately monitored the contract, he would have been aware that the contractor was not progressing satisfactorily toward completion of contract deliverables and either taken corrective action or terminated the task order before expending almost \$1 million.
OST stated that there was nothing in the contract file to support that amounts paid were higher because the government did not review draft DOPs timely.	We updated the report to more closely match OST’s wording in the JOFOC.

OST stated that there is nothing in the contract files to substantiate senior OST officials pressured contracting officials, although they acknowledged that there may have been disagreements between contracting and program officials as part of normal business. Instead, OST pointed out that contracting officials are required to abide by their regulatory requirements.	While it is true that contracting officials are required to abide by regulatory requirements, we remain concerned about undue influences that would impair or intimidate any of these officials from performing their respective fiduciary responsibilities. Given the nature of the concerns expressed to us, we would not expect the concerns to be documented in the official contracting records.
Sole-Source Contracts Were Awarded Without Adequate Justifications	
NBC stated that its sole-source award of contract NBCTP040428 (the only one NBC awarded) was done properly in accordance with FAR. NBC justified and obtained approval from the Solicitor for the follow-on sole-source contract.	We updated the report to clearly state that a legal sufficiency review was completed. However, a legal sufficiency review does not validate the accuracy of the information stated by the program office. Instead, the Solicitor validates that all information required by FAR is addressed in the justification. The Solicitor must rely on the program officials' certification that the information provided is accurate.
Added Work Sole-Sourced Through Contract Modifications	
OST stated that contract CMK9900001 had 60 modifications.	The contract was ongoing during the course of the audit. We updated the report to show the cut off date we used to arrive at 57 modifications.
OST stated that Contract CMK99000001 was never administered by BIA.	The initial letter contract was signed on October 16, 1998, and the definitized contract on January 7, 1999. Both were signed by a BIA contract office employee. While the definitized contract does indicate that NBC is the contracting office, the fact that a BIA employee signed as the contracting officer would indicate to us that the contract was being administered by BIA.
OST disagreed with our conclusion that modifications to contract CMK99000001 resulted in an improper sole-source. Instead, OST asserted that modifications were issued to close out open tasks and to allow time to put new contracts in place. Additionally, OST stated that there is no FAR prohibition against modifications.	The FAR prohibits modifications if they add tasks outside the original scope of the contract or add significant funding. Forty-two modifications to contract CMK99000001 were for work outside the contract's original scope. Five of the remaining fifteen added significant funding. These modifications were not just closing out open tasks.
Contract Sole-Source Awarded Under the Guise of Competition	
OST disagreed that contract SMK00050058 was improperly awarded. Instead, the contractor was selected as best value and the contractor with the lower bid was properly excluded because of unreasonably low hours included in its bid.	Because the award is currently under investigation, we will not amend the report to provide additional information.