United States General Accounting Office

GAO

Report to the Honorable Don Young
House of Representatives

October 2000

GENERAL SERVICES ADMINISTRATION

Contract Guard Services at the Anchorage Federal Building

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United States General Accounting Office
Washington, D.C. 20548

October 10, 2000

The Honorable Don Young
House of Representatives

Dear Mr. Young:

This report responds to your July 12, 1999, request for us to review both the level of physical security provided and the administration of the contract for security guard services at the Anchorage, AK, Federal Office Building (AFOB) by the General Services Administration (GSA). We provided information on the level of physical security provided by GSA at AFOB in testimony we presented before the Subcommittee on Oversight, Investigations, and Emergency Management, House Committee on Transportation and Infrastructure, on October 7, 1999.[1]

As agreed with your office, this report addresses your concerns about whether GSA (1) was biased or preselected the contractors awarded the two most recent contracts for security services at AFOB, (2) used appropriate wage determinations for compensating the contract security guards under contracts awarded by GSA for guard services at AFOB since 1996, and (3) responded appropriately to guard allegations that the security guard contractor at AFOB for most of the period since 1996 was not complying with important contract requirements and was committing what the guards referred to as unfair labor practices.

Results in Brief

A company formed in part with members of the security guard workforce at AFOB competed unsuccessfully for these two contracts and subsequently alleged bias and preselection by GSA in the contract award process. However, our review of relevant documentation and discussions with officials of GSA and the company that alleged the irregularities did not disclose any evidence of bias or preselection in GSA's award of these contracts.

GSA appears to have used the appropriate wage rate of $11.09 per hour for security guards as determined by the Department of Labor (DOL) for federal labor contracts for the contract awarded in 1996 and for the two

[1]See General Services Administration: Status of Efforts to Improve Management of Building Security Upgrade Program (GAO/T-GGD/OSI-00-19, Oct. 7, 1999).

option-year extensions under that contract exercised in 1997 and 1998.[2] For the 2-month interim contract awarded in 1999, GSA appears to have used the appropriate wage rate of $12.62. However, GSA appears to have inadvertently used an outdated DOL wage determination in its most recent contract because of a misunderstanding of the wage determination process and incorrect advice provided by DOL in 1999. As a result, GSA's most recent contract provides for an hourly wage rate of $11.09 instead of $12.62, which, according to DOL, is the correct wage rate. DOL acknowledged that similar confusion could also exist at other federal agencies concerning the use of certain wage determinations.

All of the documentation needed to fully assess GSA's response to the guards' allegations that the security guard contractor at AFOB from August 1, 1996, through July 31, 1999, was not meeting important contractual responsibilities was not available. However, on the basis of the substantial amount of information we were able to obtain, including certain documents and oral information from the guards and GSA officials, it appears that GSA could have done more to respond to the guards' concerns and help ensure and document that the contractor was providing for the safety of federal employees and the security of federal facilities in accordance with the contract.

For example, the guards alleged to GSA that some weapons provided by the contractor were substandard, and they said that GSA did not always act to determine whether these weapons were acceptable. As a result, according to the guards, many of them carried their personal weapons while on duty. The Federal Acquisition Regulation (FAR) requires agencies to ensure that services provided by contractors meet requirements. It appears that GSA could have done more to ensure that it was getting what it was paying for in light of the guards' allegations to the contrary and that, if necessary, corrective action was taken.

In addition, GSA could have done more to respond to the guards' unfair labor practice charges repeatedly directed at this same contractor throughout most of the contract period. The guards informed GSA on numerous occasions of the importance of these issues to them, issues that related primarily to their pay and benefits; they warned GSA that if it did not assist in resolving the issues, the guards would strike. However, GSA

[2] For the 1996 contract, GSA used an outdated DOL wage determination. However, there was no effect on the wages paid the guards because the appropriate wage rate under both the outdated DOL wage determination and the then-current DOL wage determination was the same—$11.09 per hour.

generally did not act to help resolve the issues or refer the labor-management issues to an appropriate agency that could help resolve them or refer the guards' complaints about pay and benefits to DOL. The FAR provides that federal contracting agencies are to (1) remain impartial in labor-management disputes but see that appropriate assistance is obtained to help resolve the disputes so that contract performance is not interrupted and (2) refer complaints about pay and benefits to DOL.

Moreover, contract performance was interrupted when the guards went on strike against the contractor. The strike potentially jeopardized security at AFOB and cost GSA an undetermined sum of money. Prior to the strike, the guards contacted the National Labor Relations Board (NLRB), which investigated their complaints and in August 1999 charged the contractor with violations of the National Labor Relations Act. A final ruling on these charges by NLRB had not been issued as of September 2000.

We are making recommendations to the Administrator of GSA concerning the responsibilities of GSA Region 10 officials and possible training and supervision needed to ensure that contracting officials follow appropriate laws and regulations and that GSA reach an understanding with DOL that will ensure that appropriate wage determinations are used in GSA contracts. Also, we are recommending that the Secretary of Labor take action to ensure that other federal agencies understand DOL's position relating to the use of certain wage determinations.

GSA generally agreed with the information in our report and with our recommendations. DOL pointed out that our draft report reflected some confusion concerning the appropriate wage determinations GSA should have used in certain situations, acknowledged that this confusion may exist at other federal agencies that use these wage determinations, and agreed with our recommendation to the Secretary of Labor. We clarified our report to reflect DOL's comments.

Background

In response to the bombing of the federal building in Oklahoma City in April of 1995, the President directed the Department of Justice (DOJ) to assess the vulnerability of federal office buildings, particularly to acts of terrorism and other forms of violence. The June 1995 report stemming from that study recommended specific minimum security standards for federal buildings and criteria, guidance, and time tables for evaluating security needs and improving security at these buildings. The President delegated GSA the responsibility for upgrading security at federal buildings under its control.

The Federal Protective Service (FPS) is GSA's arm responsible for managing the physical security in and around GSA-controlled facilities nationwide, investigating incidents and criminal complaints occurring on GSA properties, and conducting risk assessments of federal facilities. FPS has staff in each of GSA's 11 regions, including uniformed Federal Protective Officers, physical security specialists, criminal investigators, and contract security guards. To help meet the increased building security responsibilities that resulted from the DOJ study, FPS initiated a multimillion-dollar building security enhancement program and more than doubled its contract security guard workforce. As of July 2000, about 7,000 security guards were working under contracts with FPS. With estimated fiscal year 1999 obligations of about $119 million, contract guard services represented the single largest item in FPS' operating budget.

GSA contract guards usually carry firearms and are deployed at fixed and/or roving posts in and around the perimeter of federal facilities. They often operate security-screening devices, such as magnetometers and x-ray machines, and respond to calls for security services in and around federal buildings.

A recent GSA Office of Inspector General (OIG) report on its audit of FPS' contract guard program performed between February and December 1999 found serious problems with FPS' management of these contracts. Among other things, the report stated that offices operated mostly autonomously and have followed disparate practices in critical program areas, such as contract guard training and contract enforcement.[3] The report said that owing to the absence of oversight and programmatic controls, operational breakdowns and questionable practices have occurred at the regional level, including inconsistent contract enforcement and oversight of contractors. The report concluded that as a result, the safety and protection of federal employees and facilities were potentially being compromised. The audit was conducted at 6 of GSA's 11 regional offices and at FPS' central office in Washington, D. C. However, it did not include audit work in Alaska or in GSA's Northwest/Arctic Region 10, which is headquartered in Auburn, WA.

Region 10 has responsibility for AFOB, including providing for its security. In June 1996, Region 10 officials contracted with International Services, Incorporated (ISI), of Torrance, CA, to provide security guard services for several federal facilities in Alaska, including Anchorage, Juneau, and

[3]General Services Administration, Office of Inspector General, Audit of the Federal Protective Service's Contract Guard Program, Report Number A995175/P/2/R00010, Mar. 28, 2000.

Fairbanks. The contract was awarded for 1 year, beginning August 1, 1996, with an option for GSA to extend the contract for 4 consecutive years. GSA exercised its option and extended the contract with ISI in August 1997 and again in August 1998. However, for several reasons, GSA decided not to extend the contract with ISI for the 1-year period that was to begin on August 1, 1999.

Because GSA was unable to advertise and award a new contract that could be in effect by August 1, 1999, it awarded an interim 2-month contract for security guard services. GSA's contracting officer in Anchorage awarded the interim contract to NANA Management Services, Inc., (NANA) of Anchorage, AK; the contract was in effect from August 1 through September 30, 1999. Subsequently, GSA's regional office awarded a new longer term contract (1 year with 4 option years) to American Guard Services, Inc., (American Guard) of Los Angeles, CA, which was effective October 1, 1999.

Beginning in about mid-1997, a number of the contract guards began to voice numerous complaints to GSA about ISI. Their complaints involved such issues as poor quality or nonexistence of equipment that the GSA contract required ISI to provide, such as weapons, ammunition, and foul weather gear; and ISI's inaccurate determination and administration of their regular and overtime pay and benefits. The guards eventually brought their concerns to the Alaska congressional delegation, the President and Vice President of the United States, DOL, and NLRB. In April 1999, with their complaints substantially unresolved, the guards began a labor strike against ISI that lasted until GSA's new guard contract with NANA was effected on August 1, 1999.

We performed our work between October 1999 and September 2000 in accordance with generally accepted government auditing standards. We requested comments on a draft of this report from the Administrator of GSA and the Secretary of Labor. Their comments are addressed at the end of this report. A detailed discussion of our scope and methodology is presented in appendix I.

No Evidence of Bias or Preselection

A company formed in part with members of the contract security guard workforce at AFOB, Mt. McKinley Security and Investigation Services (McKinley), unsuccessfully competed for both the GSA interim, 2-month contract and the longer term contract effective October 1, 1999. McKinley subsequently alleged irregularities in the award process for both

contracts—GSA bias against McKinley on the award of the interim contract and illegal preselection of the company awarded the longer term contract. However, on the basis of our review of relevant documentation and discussions with GSA and McKinley officials, we believe the charges of irregularities in the award process for the two contracts are not supported by the facts. Specifically, we found no evidence of bias or preselection by GSA in its award of either of these contracts. Also, although the General Accounting Office is one of the forums to which McKinley could have protested GSA's award of the two contracts, it did not avail itself of this remedy.

The 2-Month Interim Contract

According to GSA contracting officials and documentation we reviewed, an interim contract for the period August 1, 1999, through September 30, 1999, was necessary because of the timing of the decision by Region 10 FPS officials to not exercise the third option year of the contract with ISI. The decision not to exercise the option was made in late May 1999. GSA attempted to negotiate with ISI for a 60-day extension to the existing contract but was not successful. When negotiations with ISI failed, GSA decided to issue a solicitation for a 2-month "interim" contract. GSA officials said that this allowed them the additional time needed to solicit and award the longer term contract.

According to regional contracting officials, they began the acquisition process on about July 7. Under the FAR, government agencies must publicize their contracting opportunities. In accordance with this requirement, GSA entered the presolicitation notice of its intention to award the 2-month contract into the Commerce Business Daily Internet site on July 8; the solicitation was entered on July 12. The solicitation asked respondents to submit offers by July 26.

GSA's procurement records showed that 16 companies inquired about the solicitation. This included six companies in Anchorage that the contracting officer had contacted directly to help ensure competition. Three of the 16 companies submitted offers by July 26. One of these companies, NANA, had the lowest price in its offer but GSA did not initially consider it because the company was not a small business, as defined by the Small Business Administration (SBA), and GSA had advertised the contract as a small business set-aside.

On July 27, the GSA contracting officer and an FPS official in Anchorage contacted the two remaining solicitation respondents—McKinley and another company based in Florida—to ensure that each company understood all of the contract requirements. According to the contracting

officer, it was at this time that she learned that neither company had a security agency license issued by the state of Alaska. The state required such companies to be licensed, and the GSA solicitation required that offerers meet all state requirements. The contracting officer told us that she requested both companies to provide evidence of the required state license by July 29, 1999.

Further, she said that she also learned at that time that McKinley, whose bid was the lower of the two remaining competitors, had not included the cost of fringe benefits for the contract guards in its offer. She said that she told McKinley representatives that under the law, their bid could not be revised to include the costs of providing the fringe benefits. She said that McKinley representatives responded that they could not pay for the fringe benefits on the basis of the price represented in their offer, and they would have to withdraw from competition.

The contracting officer also said that McKinley representatives told her that because the company had only recently been formed, it did not have guard uniforms with company insignia available should they be awarded the contract, and they would have difficulty obtaining the uniforms in the 5 days left before the contract was to take effect. She said that McKinley wanted GSA to allow the guards to wear uniforms with the insignia of ISI, their former employer.

On July 29, 1999, the contracting officer received letters from both companies withdrawing their respective offers. Then, following the provisions of FAR 19.506, she sent a letter to SBA in Anchorage requesting that the small business set-aside designation for this procurement be dissolved because the only remaining offerer was not a small business. Her letter stated that this action was necessary due to the time constraints involved and the potential detrimental impact to the public interest if security services lapsed on August 1 at several federal facilities in Alaska. SBA concurred in this request.

With the two small businesses having withdrawn and with the small business set-aside dissolved, the contracting officer determined that the offer by NANA was acceptable. After considering such factors as the company's financial resources, business ethics, and past performance, she determined that NANA was "responsible." The contracting officer's Price Negotiation Memorandum, required by the FAR and dated July 30, 1999, stated that with receipt of the three offers in response to the solicitation, there had been competition and that NANA's offer, with the lowest total price of the three offers received, was fair and reasonable. The

memorandum further stated that it was in the government's best interest to award the interim contract to NANA, which GSA did on July 30.

Representatives of McKinley told us that they believe that GSA officials were biased against the company because two part-owners had participated in the strike against ISI. They told us that they believe that GSA used the facts that McKinley did not have a state license as a security services company and would have difficulty in obtaining appropriate guard uniforms by the contract's effective date as excuses for not selecting McKinley for the interim contract. They said that they told GSA at the contract preaward meeting that they believed they could either obtain a license from the state by the contract effective date or obtain a short-term waiver from the state until a license could be issued. They also said that they believed that GSA could have provided them a waiver for the short time period that it would have taken for them to obtain the proper guard uniforms. In addition, they told us that GSA treated the company unfairly in requiring it to pay fringe benefits. They also said that the company would have been severely handicapped in carrying out its responsibilities because the GSA contracting officer's representative was strongly biased against it.

We did not find evidence of any bias on the part of GSA in the award of the interim contract. Although we do not know the personal views of GSA officials toward McKinley, the contracting officer consistently applied the provisions of the solicitation. Specifically, GSA discussed the requirement for a state license with both McKinley and one other competitor and required both companies to provide evidence of compliance. Both companies subsequently withdrew. The assertion by McKinley that GSA treated McKinley unfairly by requiring it to pay the cost of the guards' fringe benefits is unfounded. GSA's solicitation required that offerors include an amount for guard wages and benefits that was at least equal to the amount included in the DOL wage determination cited in the solicitation. According to the contracting officer, the offer that NANA made to GSA included such an amount in its price.

The Longer Term Contract

On August 5, 1999, GSA awarded a contract to American Guard for security guard services for an initial 1-year period to begin on October 1, 1999, with four successive option periods of 1 year each. McKinley, which also sought the contract, alleged irregularity in GSA's award of the contract to American Guard. McKinley had determined that American Guard had used an employment screening form that included the ISI name on the form. McKinley representatives told us that they believed that this was an indication that American Guard and the former contractor, ISI,

were in fact the same company. They told us that they believed that GSA had preselected American Guard for this contract because American Guard was simply an extension of ISI. However, we found no evidence that GSA acted inappropriately in awarding the contract to American Guard.

GSA posted the solicitation for the longer term contract on the Commerce Business Daily Internet site on June 7, 1999, which allowed a 19-day period for respondents to submit offers by the June 25, 1999, solicitation closing date. GSA received eight responses to the solicitation, which were evaluated jointly by the contracting specialist and an FPS official in Auburn against specific criteria or factors described in the solicitation. Two respondents were eliminated because they failed to meet the criteria for experience and/or past performance.

In addition, McKinley was eliminated because its offer did not meet a key requirement of the solicitation. Specifically, McKinley was eliminated because its offer did not contain the "Technical Proposal" required by the solicitation. The Technical Proposal was to provide, among other things, the following:

- demonstrated company experience performing similar services within the past 5 years, with a minimum of 3 years of consecutive experience;
- information on the quality, feasibility, and extent of the company's capabilities to manage the contract, including resumes of key personnel designated to oversee the day-to-day operations of the business; and
- a staffing plan.

The contracting officer told us that her decision to eliminate McKinley from the competition was supported by applicable procurement procedures. In this regard, contracting officers may allow offerors to clarify information or correct minor or clerical errors in their offers, but an offeror is not allowed to provide additional information needed to make the offer complete after the solicitation closing date.

GSA evaluated the remaining five offers. American Guard's offer contained the lowest price—its proposed hourly pay rates, including overhead, were below all competitors' prices and GSA's estimate. Also, the contracting officer determined that American Guard had adequate financial resources, a satisfactory performance record, integrity and business ethics, and the necessary experience and organizational skills to be considered eligible to be awarded the contract.

McKinley has alleged that American Guard and the previous contractor, ISI, were in fact the same company. McKinley's primary support for this contention was that an employment screening form used by American Guard contained the ISI name on it. According to the contracting officer, she brought this matter to the attention of American Guard's Vice President, who responded by apologizing for the error. He explained that as a former employee of ISI now employed by American Guard, he had kept some of ISI's electronic employment screening forms. He said that one of these forms had inadvertently been used by American Guard, which was formed in 1997. The contracting officer said that she verified from the Vice President's resume that he had previously worked for ISI, accepted his explanation as reasonable, and did not pursue the matter further.

In our view, GSA reasonably inquired into American Guard's inadvertent use of ISI's screening form, and McKinley has provided no other evidence suggesting that American Guard was controlled by ISI. Even if such a relationship existed, we found no evidence that GSA had preselected American Guard for award of the contract.

Appropriate Wage Determinations Not Always Used

GSA did not use the appropriate DOL wage determination on two of the contracts awarded for security guard services at AFOB since 1996. On the 1996 contract, GSA used an outdated wage determination for the initial year of the contract. But the mistake did not cost GSA money or harm the guards because the guards' wage rate was the same for both wage determinations—the then-current wage determination and the outdated wage determination that GSA used.[4]

On the August 1, 1999, interim contract, GSA appears to have used the appropriate wage determination. However, GSA appears to have inadvertently used an outdated wage determination on the following longer term contract. That contract provides an hourly wage rate to the guards of $11.09 per hour, while the most current wage determination provides for an hourly wage rate of $12.62 per hour.

DOL Wage Determinations

Federal contracts for services, such as security guard services, are subject to the provisions of the Service Contract Act of 1965, as amended (41 U.S.C. 351-358); as well as to applicable provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 201-219); and to the Secretary of Labor's regulations and instructions provided in 29 C.F.R. Parts 4,6, 8, and 1925. FAR, Subpart 22.10, specifically prescribes the

[4] A new wage determination can be issued for reasons other than changes in wage and benefits rates, such as to correct various types of errors in an earlier wage determination.

policies and procedures for implementing the applicable provisions of these laws and regulations as well as the instructions of the Secretary of Labor.

The FAR specifies that among other things, service contractors are to pay the employees performing the services "at least" the hourly rates for wages and fringe benefits, such as health and life insurance and retirement contributions, that DOL has determined to prevail in the locality where the services are provided. Where there is no collective bargaining agreement between the contractor and its unionized employees that provides for wages and fringe benefits that are higher than the DOL wage and fringe benefits determination, the FAR requires government contracting officers to obtain from DOL and use the current wage and benefits determination for all solicitations, contracts, and contract options for $2,500 or more when service-type employees are to be used.

To obtain a current wage and fringe benefits determination, the FAR requires government agency contracting officers to notify DOL at least 60 days prior to each new services contract solicitation or exercise of an option to renew or modify a services contract. The notice to DOL is to use the exact job titles and codes for the service jobs to be included in the contract as shown in DOL's Service Contract Act Directory of Occupations. The directory contains commonly used job titles and descriptions of the duties performed by various classes of service employees employed by the government. Upon notification, DOL is to issue to the contracting agency a current wage and benefits determination. DOL is to develop wage determinations on the basis of available data showing wage and benefit rates for specific skills that prevail in specific areas of the country. The FAR requires the contracting agency to incorporate the current wage and benefits determination in the contract solicitation for which it was requested.

Competitors for federal contracts are then to use the wage and benefits determination in their contract proposals or offers submitted to the contracting agency. Also, the contractor selected for the contract is to pay its employees performing the services under the contract at least the wage and benefits hourly rates specified in the agency's solicitation. For contracts with successive option years, contracting agencies are to ask DOL to update the wage determination each year, and the contractor is to adjust the wages and benefit rates accordingly.

GSA Region 10 Wage Determination Procedures

Since July 1989, GSA Region 10 has used what is referred to as a "blanket wage determination" for determining the appropriate wages and benefits to be paid on the Region's service contracts. To reduce the administrative burden and costs for both GSA and DOL of complying with FAR wage determination requirements, a Memorandum of Understanding (MOU) between GSA Headquarters and DOL established a process for GSA to use annual blanket wage determinations.

Under the blanket wage determination process, Region 10 is to annually develop a comprehensive procurement plan showing the service contracts that will be awarded for each specific geographic area in the Region, such as Alaska in Region 10. Then, the Region is to submit to DOL a single notice showing its planned service contracts for each specific area. DOL is to respond to the notice by issuing an "area wide" blanket wage determination that shows the current wage rate and benefits that apply to each job to be included in GSA's service contracts in each geographic area. GSA then is to use the blanket wage determination in all solicitations for service contracts in that geographic area. The blanket wage determination is to be in effect for generally about 12 months, after which DOL is to notify GSA that it is time to request a new, updated blanket wage determination from DOL. Hourly rates for fringe benefits are also provided in the blanket wage determination and are also generally updated every 12-months. However, DOL may update fringe benefit rates at other times and is to notify GSA of the new rates when this occurs.

GSA Region 10 Application of Wage Determinations

Our review of GSA's use of DOL wage determinations for each contract and option year exercised showed that GSA submitted the required notices to DOL requesting the blanket wage determination for security guard service jobs in Alaska each year when prompted by DOL to do so. Each notice included the required information, such as the correct DOL occupation classification code and position description. Further, we determined that GSA's actions in awarding these contracts were consistent with the blanket wage determination process covered under GSA's MOU with DOL, with two exceptions.

The contract security guards at AFOB had complained to GSA, DOL, and others for several years that they were underpaid because GSA was using outdated and inappropriate DOL wage determinations. The guards' concern stemmed from what they believed was their relatively low wage rate of $11.09, which had remained unchanged during the 3-year period of the ISI contract. In comparison, the hourly wage rate paid to court security officers working under contract to the U. S. Marshalls Service and who also worked at AFOB had almost doubled over the same period of time.

However, DOL informed the guards in March 1999 that the disparity between their wages and those of the court security officers was caused by the fact that guards and court security officers are separate and distinct job classifications, each having different job descriptions. Further, we found that GSA used the appropriate DOL wage determination in accordance with the MOU for each contract and option period except for the initial year of the 1996 contract, when the contracting officer used an outdated blanket wage determination; and for the most recent contract in 1999 when, apparently partly on the basis of incorrect advice she received from a DOL official, the contracting officer inadvertently did not use the more current DOL revision to the wage determination. According to DOL, GSA should have used the revised wage determination in accordance with the MOU and 29 C.F.R. 4.5.

GSA used an outdated blanket wage determination on the initial contract with ISI in June 1996. The blanket wage determination that GSA used had been recently superceded by a new blanket wage determination. There was no resulting monetary loss to GSA or the guards because both the wage and benefit rates, $11.09 per hour and $0.90 per hour, respectively, were the same under both blanket wage determinations. The GSA contracting officer responsible was no longer with GSA. However, a Region 10 official told us that this contracting officer probably did not want to spend additional time revising the contract solicitation to reflect the updated wage determination because there was no effect on GSA or the guards from using the superceded blanket wage determination for that solicitation.

On the interim contract, the responsible GSA contracting officer in Anchorage said that she was not aware of the MOU between GSA and DOL; therefore, she obtained and used the most current DOL wage determination. GSA initially believed that the contracting officer's use of the most current wage determination instead of the blanket wage determination was inadvertent. However, it appears that the wage determination used on the interim contract was correct. The wage and fringe benefits rates were $12.62 and $1.63 per hour, respectively, under the current wage determination and $11.09 and $1.63 per hour, respectively, under the blanket wage determination.

For the longer term contract effective October 1, 1999, GSA reverted back to the blanket wage determination, and the guards' wage rate reverted back to $11.09 per hour. Prior to the solicitation of the longer term contract and because the guards had raised the issue that DOL had recently issued a revised wage determination, GSA asked DOL to confirm

that the blanket wage determination it planned to use in the solicitation was the appropriate wage determination. In response, a supervisor in DOL's Wage and Hour Division, Employment Standards Administration, replied in a letter to GSA that the blanket wage determination specified was the appropriate wage determination to use.

However, after learning of this issue from our draft report, DOL's Director of the Office of Wage Determination, Wage and Hour Division, Employment Standards Administration, told us that GSA should have used the revised (more recent) wage determination with the higher wage rate for the longer term contract. He said that a DOL supervisor had apparently erred in advising GSA to use the wage rate specified in the blanket wage determination for the longer term contract. He said that because GSA had learned of the revised, more current DOL wage determination prior to the solicitation of the interim contract, GSA was obligated to use the most current wage determination in accordance with the MOU and 29 C.F.R. 4.5 on both the interim contract and the longer term contract. He said that the blanket wage determination program was never intended to give contracting agencies the authority to knowingly use outdated wage determinations. Further, he acknowledged that on the basis of the confusion that appears to exist at GSA, other federal agencies using the blanket wage determination program may also be unaware of DOL's position on how wage determination revisions affect the blanket wage determination program. He said that about 15 federal agencies are participating in the blanket wage determination program.

In response to DOL's comments, GSA pointed out that it did what the DOL supervisory official indicated it should do on the longer term contract. It said further that in its review of DOL's comments with GSA legal counsel, questions had arisen about the incorporation of modifications to wage determinations into the contract. GSA said that it was looking into the impact on the use of blanket wage determinations and how region 10 should approach these issues in the future. Thus, it is not yet clear whether GSA and DOL agree on this issue.

This situation raises the question of whether the guards are entitled to higher wages for the entire period covered by the contract. It also raises the question as to whether other federal agencies are appropriately using DOL wage determination revisions in locations where blanket wage determinations are in use.

GSA Response to Guard Contract Compliance Allegations

The guards have alleged that GSA did not take appropriate action to enforce the contract with ISI, even after they told GSA on numerous occasions that ISI was not complying with certain important provisions of the contract. Our review of these allegations did not begin until after GSA's contract with ISI had ended. Further, little documentary evidence of GSA's actions to address the guards' allegations was available. However, the documentation we were able to obtain and oral statements from the guards and GSA officials lead us to believe that GSA could have done more to ensure and document ISI's compliance with the important contract requirements that were of specific concern to the guards.

The FAR directs contracting officers and contracting agencies to ensure that services provided by contractors meet contract requirements. We found little evidence that GSA initiated or documented appropriate action to investigate repeated allegations made by the guards that important contractual requirements were not being met or to see that GSA was receiving all that it was paying for.

Contracting Officers' Responsibility to Enforce Contracts

The FAR places important responsibilities on contracting officers and their representatives to ensure that the interests of the government and the taxpayer are safeguarded. FAR Subpart 1.602-2 states that among the responsibilities of contracting officers is the obligation to ensure compliance with the terms of the contract and, if necessary, to request and consider the advice of specialists in audit, law, engineering, transportation, and other fields as appropriate.

Contracting officer representatives who usually have technical expertise in areas specifically related to the functional area for which the contract has been awarded, such as security services, are to ensure that the contractor's efforts comply with the technical features of the work required by the contract. This includes the responsibility to inspect and evaluate work performed under the contract, assist the contractor in interpreting the technical requirements of the contract, and advise the contracting officer as difficulties or situations arise that may disrupt or hinder performance of the contract.

Guards' Allegations

Several guards, including the president of the guards' union local, told us that beginning in mid-1997 they began complaining to ISI, the GSA contracting officer's representative in Anchorage, and subsequently to both GSA contracting and FPS officials in Auburn about ISI's failure to comply with certain contract requirements that could materially affect contract performance. The guards alleged that ISI provided (1) poor quality or nonexistent guard training in important areas, such as in the

operation of metal detection equipment and in the detection and recognition of explosive devices; (2) substandard firearms; (3) less ammunition than required; and (4) insufficient foul weather gear, such as cold weather parkas and ear protection. They said that they almost always received either no response or an inadequate response from ISI; and GSA representatives almost always responded that these matters were between the guards and the contractor, not GSA. The guards' complaints implied that ISI was not meeting important contractual responsibilities.

The guards told us that the training they received from ISI, as well as the required qualifications testing, was inadequate and, on at least one occasion, test results were falsified. According to the president of the guards' union local, some of the guards were hired and posted to duty without receiving the required training, such as in the use of x-ray and metal detection equipment, even though the ability to use this equipment is set forth in the guards' job descriptions and in the GSA contract.

In addition, the union local president and a guard told us that a guard was hired and assigned to his post before he successfully completed the firing range qualification test required by the contract. They said that ISI falsified the record to show that the guard had successfully completed the firing range test. The GSA contract with ISI, at Part 13, states that each uniformed guard must qualify with his/her duty weapon before assignment to duty and annually thereafter. Also, it states that the contractor must submit written records of these qualification tests to the contracting officer's representative.

Further, several guards told us that sometimes the firearms issued to the guards were substandard and unreliable and often failed on the practice firing range. They said that as a result, many of the guards carried their personal weapons while on duty and used them to weapons-qualify on the firing range. They said that to get around the GSA contract restriction against using their personal weapons, they leased their weapons to ISI for $1 per year. This practice, in effect, shifted the costs of providing qualified weapons from ISI to the guards. Part 9B (1) of the contract stated that the contractor is to provide all necessary equipment, including firearms, to perform all work under the contract. Additionally, the contract says that employees of the contractor are prohibited from carrying personal weapons while on duty. We believe the practice of having the guards lease their personal weapons to ISI so that they could carry them while on duty was an effort to circumvent the requirement that the contractor was responsible for providing necessary equipment, including firearms, and the

prohibition against employees carrying their personal weapons while on duty.

Several guards told us that ISI commonly did not provide them with the full amount of ammunition required by the GSA contract. For example, one of the guards said that when he was hired, the contractor issued him only 8 rounds of ammunition instead of 18 rounds, which is provided by the contract. Further, several of the guards told us that the ammunition provided by ISI was not regularly inspected or replaced each year as required by the contract. Several of the guards said that as a result, it was common practice among the guards to provide their own ammunition. Part 9B 1(e) of the contract provided that guards and supervisors on duty are to carry 18 rounds of factory-load hollow point ammunition for revolvers or 3 fully loaded factory-issued magazines for semiautomatic weapons, ammunition is to be provided by the contractor and inspected daily to ensure that it is safe and effective for use, and the contractor is to issue new ammunition annually.

Finally, the guards told us that ISI and GSA failed to respond to their repeated requests for foul weather gear suitable for the extreme temperatures and weather conditions that occur in Alaska. They said that they specifically pressed for parkas suited to performing their outdoor duties during the winter months. They said that eventually ISI provided six one-size-fits-all military surplus parkas that were not suitable for extreme conditions and that were to be left on site and shared by all the guards when they performed their outdoor duties. Several guards said that to stay warm, many guards wore their personal parkas while performing outside duties. Further, an FPS official in Anchorage told us that because he felt sorry for the guards, he occasionally loaned the guards his personal heavy-duty coat.

The GSA contract with ISI specified that the contractor is to issue each guard a quantity of uniforms and other items that ensures that the guards are in proper uniform while on post. The contract listed the other items, such as “a parka and winter hat with ear flaps” for rover and exterior posts.

The president of the guards’ union local told us that he and other members of the guard workforce reported each of the concerns enumerated above to GSA’s contracting officer’s representative on numerous occasions. He said that the response that they usually received was that there was nothing that the contracting officer’s representative or GSA could do because the issues were between the guards and ISI, and complaints

should be brought to ISI. The president of the union local said that he also reported these problems to other GSA officials in both Anchorage and in GSA headquarters in Auburn. He said that he received either no response or a response that he should take the problems up with ISI.

GSA's Response

We discussed the guards' allegations with an FPS officer in Anchorage who was also the contracting officer's representative throughout most of the ISI contract period. He said that he could not remember discussing all of these allegations with any of the guards or the president of the guards' union local, but he acknowledged frequently receiving complaints from the guards about numerous problems they were having with ISI. He said that he sometimes responded to the guards that the problems were between them and ISI and that neither he nor GSA could get involved. However, he also said that on other occasions, he contacted ISI and asked that the problem be taken care of. He said that he believed that ISI usually took care of the problem. He said that he almost always informed the contracting officer and/or FPS officials in Auburn of the guards' complaints. He said that he rarely documented either the guards' complaints or the action he took in response to the complaints.

On the specific issue raised by the guards of substandard weapons, the contracting officer's representative told us that when a guard complained to him about a weapon misfiring or otherwise malfunctioning on the firing range, he brought the matter to the attention of ISI. He said that ISI usually responded that it would remove the weapon from its inventory. However, he said that he did not verify that ISI had removed any weapons from inventory, and he did not inspect the weapons carried by the guards to determine their suitability because he was not a weapons expert. Further, he said that he was aware that some of the guards had leased their personal weapons to ISI so that they could carry them while on duty. He said that he assumed that this practice was not prohibited by the GSA contract with ISI.

Specifically regarding the guards' allegation that ISI had falsified records relating to one of the guard's range qualifications test, the contracting officer's representative said that he reported the matter to an FPS criminal investigator in Anchorage. He said he did not know if there was an investigation by FPS or the result of any investigation that might have been made.

We then contacted that FPS investigator, who said that he discussed the alleged incident with ISI and was told that after its investigation ISI had fired the individual responsible for falsifying the record. However, he said

that he did not have the time to verify that ISI had in fact investigated the matter and fired the individual responsible. Further, he said that he did not communicate the results of his investigation to the guard involved or to the union.

We contacted several contracting officials and FPS representatives in Auburn to discuss their knowledge of and response to the guards' allegations. They said that they were aware of some, but not all, of the allegations. They said that they believed that all allegations involving contract compliance by ISI were being addressed by the contracting officer's representative in Anchorage.

However, the president of the guards' union local provided us with a letter, dated September 18, 1998, that he wrote to the GSA contracting officer's representative. The letter stated that after two Capitol police officers had been killed in Washington, D. C., it was important to bring to GSA's attention dangerous flaws in its security program that put federal employees and visitors to federal buildings in Alaska in great peril. The letter itemized 16 guard concerns about safety in and around AFOB, including contract compliance issues, such as the lack of an established guard training program; obsolete and substandard weapons issued to the guards; insufficient guard weapons training; no weapon qualifications by some guards; insufficient foul weather gear for the guards; and substandard electronic communications among the guards while on duty.

The last item mentioned in the letter was that there was a serious morale problem among the guards because of the appearance that FPS and GSA did not care what happened to them. The letter closed by stating that the guards stood ready to discuss the problems outlined in the letter and ready and willing to assist GSA in correcting these serious safety issues. The union local president told us that he sent copies of the letter to other GSA representatives both in Anchorage and in Auburn, including the contract specialist in Auburn with responsibility for handling the ISI contract.

The president of the union local also provided us with a response, dated September 29, 1998, to his letter that he received from an FPS official in Auburn. It stated "This response provides you and your union members with the information you need to direct your concerns to the proper organization." It further stated that because GSA's contract with ISI did not involve a collective bargaining agreement between the contractor and the union, the issues raised by the union should be addressed to ISI. The letter also stated that GSA's security program, including the one in Alaska, reflected the requirements of the Department of Justice Vulnerability

Assessment of Federal Facilities, as well as the recommendations of each facility's building security committee. The letter closed by showing an address where correspondence to ISI could be sent. According to the president of the union local, this letter from GSA/FPS was typical of the responses received from GSA about these issues.

We believe that the guards' allegations related to ISI contract compliance issues merited more formal, systematic follow-up by GSA. In its recently completed audit of GSA's nationwide contract guard program, which did not include Region 10, the GSA OIG found both poor contract enforcement by GSA and contractor compliance issues similar to those raised by the guards in Anchorage. In addition, an internal audit of the region's contract guard program by Region 10 FPS officials conducted after learning of the results of the OIG audit found both contractor compliance and contract enforcement problems similar to those raised by the guards during the ISI contract.

The primary objective of the OIG audit—determining if GSA was optimally managing its contract guard program—was much broader than our objective of determining whether GSA appropriately responded to guard allegations that ISI was not complying with important provisions of the contract. However, several contractor oversight concerns identified by OIG at the locations it visited were very similar to concerns alleged by the guards at AFOB. Specifically, OIG found that contract guards were on duty without (1) the required training from the contractor to perform their duties, including training in the use of x-ray scanners and magnetometers; and (2) valid firearm qualifications. OIG concluded that GSA was not consistently enforcing and overseeing program contracts.

After hearing about what OIG found in its audit in other GSA Regions, in December 1999 Region 10 FPS officials reviewed the Region's contract guard program. Among other things, they found that (1) regionwide, guard training records were not being maintained, and the contracting officer representatives were not tracking the required guard training; (2) the contracting officer representatives were not determining the continuing qualifications of the guards to perform their duties; and (3) on the Alaska contract specifically, 3 of 12 guard weapons inspected were found "not acceptable" because they were either not clean or not in proper working order. Further, they stated that there needs to be an ongoing dialogue between contracting officers and their representatives to ensure that problems are resolved before they become so severe that they cause contract compliance problems. The FPS officials said that this includes

keeping contracting officers informed of noncompliance issues or any guard problems within the scope of the contract.

According to GSA's OIG, the contract oversight and enforcement problems it found were the result of GSA's regional offices operating autonomously with limited controls and oversight by FPS headquarters and of GSA's lack of a comprehensive plan for accomplishing the contract guard program mission. OIG made several recommendations to GSA directed at eliminating the causes of the problems it found. Similarly, these causes could have been factors that influenced GSA's lack of sufficient follow-up of the contract guards' allegations in Anchorage.

GSA's Response to Guards' Unfair Treatment Allegations

In addition to their complaints about ISI's contract performance deficiencies, the guards complained even more vociferously and more often about what the guards referred to as ISI's unfair labor practices. These practices primarily entailed alleged discrepancies in ISI's administration of the guards' pay and benefits, but they also included issues related to ISI's alleged failure to bargain in good faith with the union. The guards also alleged that GSA did not take appropriate action to respond to their repeated pleas to help resolve these issues. The issues were not resolved to the guards' satisfaction, and eventually they went on strike against ISI. The strike cost GSA an undetermined amount of money to mitigate the potentially increased risk to security at several federal facilities in Alaska. Subsequent to the strike, ISI was charged with several violations of the National Labor Relations Act. ISI contested the charges, and NLRB had not taken final action at the time this report was issued.

We believe that as the contracting agency, GSA had a responsibility to avail the guards and ISI of appropriate federal or other resources to help resolve their disputes so that the delivery of the services contracted for, namely security guard services, were not adversely affected. The FAR requires agencies to take steps to ensure that parties in a labor dispute involving a government contract use available resources for resolving the dispute, including those available through other federal agencies and appropriate state, local, and private agencies. Given this FAR requirement and the importance of continual contractor performance under a security services contract, it would have been prudent of GSA to have arranged for the involvement of appropriate agencies to help resolve the disputes between the guards and ISI.

However, GSA did not attempt to bring other agencies or organizations into the dispute. The guards eventually asked NLRB to investigate, but the guards struck before the NLRB investigation was complete. The strike cost

GSA an undetermined amount of money and could have affected security at AFOB and other federal facilities in Alaska. Had GSA brought appropriate agencies, such as DOL and NLRB, into the conflict early, the strike and its monetary effects on both GSA and the guards and its potential effect on the safety of federal employees and protection of federal facilities might have been averted.

FAR and GSA Regulations

FAR Subpart 22.1 requires federal agencies to remain impartial concerning disputes between a government contractor and its employees. Agencies are specifically precluded from undertaking a role in conciliation, mediation, or arbitration in such disputes. However, the FAR states that to the extent practicable agencies should ensure that the parties to the dispute use all available methods for resolving the dispute, including the services of NLRB; the Federal Mediation and Conciliation Service; the National Mediation Board; and other federal, state, local, or private agencies, as appropriate.

The FAR states that federal agencies should, to the extent consistent with their acquisition responsibilities,

- notify the agency responsible for conciliation, mediation, arbitration, or other related action of the existence of any labor dispute affecting or threatening to affect agency acquisition programs;
- furnish the disputing parties factual information pertinent to the dispute's potential adverse impact on the acquisition; and
- seek a voluntary agreement between management and labor, notwithstanding the continuance of the dispute, to permit uninterrupted acquisition of the services being acquired.

Further, the FAR requires contracting officers to report, in accordance with each agency's procedures, any potential or actual labor disputes that may interfere with the performance of contracts under their cognizance.

GSA's internal regulations, Subpart 522.1, Basic Labor Policies, state that contracting officers are to report labor disputes that potentially may adversely affect contracts to GSA's Labor Advisor in headquarters who, in conjunction with GSA's Office of General Counsel, is to (1) serve as the focal point on matters that relate to contractor/labor relations; (2) initiate contact about these matters with national offices of labor organizations, government departments, agencies, or organizations; and (3) respond to questions involving these matters that arise in connection with GSA acquisitions.

Guard Complaints about Pay and Benefits

According to the guards, virtually from the beginning of the ISI contract, they had problems with ISI's determination and administration of their regular and overtime pay and fringe benefits. In addition, the guards have alleged that after they unionized, ISI refused to recognize and bargain in good faith with the union.

Regular and overtime pay

According to the union local president, ISI repeatedly shorted the guards' pay for the hours they worked and used a method of accounting for their work hours that was confusing. He said that ISI repeatedly refused the guards' request to clarify the computation of their pay. In addition, he said that some of the guards' holiday pay was shorted repeatedly because ISI did not always pay the guards a full 8 hours for holidays even though GSA's contract specified that all full-time guards be paid for holidays.

Further, he said that in late 1997 ISI reduced the guards' pay rate from $11.09 per hour to $9.09 per hour. Although their total hourly pay was not affected, ISI reflected on the guards' pay records that they received an additional $1 per hour uniform allowance and a $1 per hour gasoline allowance. However, the guards did not incur gasoline cost as part of their duties, and GSA's contract specified that the guards were to be provided uniforms at ISI's expense. Although the guards' total compensation still equaled the appropriate DOL wage determination hourly rate of $11.09 per hour, the union local president said the guards were concerned because their earnings were being underreported to the Internal Revenue Service, and the underreporting could adversely affect their Social Security, unemployment insurance, and workman's compensation entitlements. According to the union local president, after a series of complaints by the guards to the contracting officers' representative, ISI discontinued this practice.

In addition, ISI incorrectly calculated the guards' overtime hours by using federal standards instead of state of Alaska standards, which applied to federal contracts at GSA-managed facilities in Alaska. The GSA contract required that overtime be paid for all hours over 40 per week. On the other hand, state of Alaska law requires that overtime be paid for hours worked exceeding 8 hours per day.

In March 1997 the Alaska State Department of Labor wrote to ISI, informing it that GSA was in agreement with the state that Alaska law prevailed over federal law in this matter. However, ISI continued to calculate overtime hours in accordance with the GSA contract requirement. In about October 1998, the guards began complaining to ISI and GSA about the overtime issue. GSA incorrectly advised ISI that Alaska

law was not applicable to federal contracts. Subsequently, after enforcement efforts by the state, the guards received about $50,000 in back overtime pay from ISI. GSA reimbursed ISI for these payments because, according to GSA, ISI had calculated overtime hours in accordance with the method specified in the GSA contract. The contracting officer stated that she was not aware that ISI had received such a notice from the state or that GSA had agreed that state law prevailed some 2 years before ISI began determining overtime hours worked in accordance with Alaska state law.

We believe that GSA contracting officials should have been aware of the state's overtime provisions when the contract for guard services in Alaska was solicited and should have included a clause in the contract specifying that any overtime paid under the contract was to be calculated using state of Alaska overtime provisions.

Moreover, we believe that when the guards complained to GSA that ISI was not determining overtime hours in accordance with Alaska state law, GSA should have determined the applicability of state law to the contract and amended the contract accordingly. If the contract with ISI had provided for overtime to be determined in accordance with state law, ISI may not have structured the guards' work schedules to routinely include more than an 8-hour day. Thus, the overtime in question would not have been earned by the guards, paid by ISI, and reimbursed by GSA.

However, it is uncertain how the price in ISI's offer in response to GSA's contract solicitation in 1996 would have been affected had ISI known that it would have had to pay the guards overtime for hours worked in excess of 8 per day. ISI's total contract price offer may have been more than the additional $50,000 that GSA reimbursed ISI for the cost of the overtime. We noted that the subsequent contracts awarded to NANA and American Guard by GSA specified that Alaska state law overtime provisions were applicable to the determination of any overtime hours.

Fringe benefits

Under the contract, GSA periodically reimbursed ISI at contracted rates for the authorized hours worked by the guards. The contracted hourly rate included amounts for both wages and fringe benefits as specified in the applicable DOL Wage Determination. With respect to benefits, ISI was to use benefit monies received from GSA to provide the guards, at a minimum, the bona fide benefits obtainable from the monies received from GSA. For example, during 1998, when the wage determination benefit rate was $1.39 per hour, ISI's reimbursement from GSA to provide fringe benefits to each full-time guard would have been about $240 per month.

Any portion of this money not used by ISI to provide benefits was to be added to the pay of individual guards.

However, according to the union local president, ISI mismanaged and poorly accounted for GSA's payments for fringe benefits, and the benefits provided by ISI were substandard. He said that ISI repeatedly told the guards that their applications for participation in the 401(k)-retirement savings plan and health benefits plan had been lost. He said that sometimes, ISI lost four and five successive applications submitted by individual guards. Further, he said that ISI could not account for the funds that the guards had requested ISI to invest on their behalf in the retirement savings plan. In addition, he said that ISI did not respond to repeated requests from the guards and from the union for clarification of and accounting for the benefit monies received from GSA on the guards' behalf.

Additionally, he said ISI improperly calculated the guards' vacation time by using a percentage of hours worked during the year rather than by providing 2 weeks' paid vacation each year for guards as specified in the GSA contract. Also, he said that the health benefits ISI provided were substandard and cited an example where a guard incurred a $7,000 hospital bill and the ISI-provided health insurance paid only $500. Similarly, he said that health care providers in Alaska frequently would not accept the health insurance provided by ISI.

Cooperating With the Union

The president of the guards' union local told us that ISI repeatedly refused to deal cooperatively with the union. He said that ISI would not cooperate with the union in its efforts to establish a collective bargaining agreement and declined to provide the union with information that was both necessary and relevant to the union's responsibilities as the guards' exclusive bargaining agent.

Guards' Complaints to GSA

According to the union local president, for almost 2 years leading up to the strike on April 21, 1999, the guards repeatedly communicated their concerns about ISI verbally and in writing to GSA's contracting officer's representative in Anchorage and to other GSA officials. In August 1997, the security guards employed by ISI in Alaska petitioned NLRB to certify the United Government Security Officers of America (UGSOA) to represent their interest in dealing collectively with their employer. The president of the guards' union local told us that the guards voted to unionize because of their long-standing unresolved disputes with ISI. In November 1997, NLRB certified Local #46, a unit of UGSOA, as the guards' bargaining agent. Subsequently, according to the union local president, the union as well as

individual guards began an aggressive effort to communicate both verbally and in writing their concerns about ISI to GSA.

In about August 1998, the union began a series of letters communicating their concerns to higher level officials in GSA; other federal organizations, such as DOL; and the President and Vice President of the United States. The union local president said that the responses they received usually provided factual information and clarified matters, such as the role of DOL wage determinations in setting wages in federal contracts. Also, he said GSA's responses were almost always that the guards' concerns entailed disputes between them and ISI and that GSA had no responsibility to get involved. He said further that GSA frequently stated that it had to take this "hands-off" approach because there was no collective bargaining agreement between the guards and ISI. He said also that the contracting officer's representative told him at one point that a labor strike may be the only way to get action on the guards' problems with ISI.

The president of the union local told us that the union had informed GSA on numerous occasions of the possibility of a strike if GSA did not help resolve the problems with ISI. He said that he informed the contracting officer's representative in Anchorage in May 1998 that if the guards' pay and benefits problems with ISI were not resolved soon, the guards might strike. He said later that in October, after getting no help from GSA, the guards held a "strike vote" but decided to continue negotiations with ISI. Further, he provided us with a February 15, 1999, letter from the union to the GSA contract specialist in Auburn that discussed the long-standing issues involving the guards' fringe benefits, their need for foul weather clothing, and ISI's refusal to pay the guards overtime in accordance with Alaska state law. The letter virtually pleaded for GSA's help and closed by advising the contract specialist of the possibility of a strike "as a last resort."

In addition, a March 10, 1999, letter from the union to the contract specialist again outlined the union's many problems with ISI and advised that a strike against ISI was "imminent within the next few weeks." The letter closed as follows:

> "Once again, if there is anyway we can come to an agreement, or you can assist us, or work with us please let me know as soon as possible. We are always willing to listen and work together for a successful completion. All we are asking for is fairness and a reasonable conclusion."

The president of the union local told us that because GSA never appropriately responded to the guards' concerns, the guards believed that

there was a total lack of consideration of their welfare by GSA. He said that the situation was highly demoralizing to the guards responsible for providing the day-to-day security at federal facilities in Anchorage. He said that he believed that the low morale of the guards posed a risk to security and should have been of great concern to GSA.

GSA's Response

The GSA contracting officer's representative in Anchorage told us that he received numerous allegations of improprieties in the guards' pay and benefits from the guards for several years leading up to the strike. He said that for the most part, he believed that these disputes involved contractor and employee relations and that GSA had no authority or responsibility to get involved. He said that he usually told the guards to take their concerns about their pay and benefits to DOL. He said that he never contacted any federal or state agency about the guards' concerns. On the other hand, he said that he had always informed the GSA contract specialist and FPS officials in Auburn whenever the guards brought a problem about ISI to him.

In Auburn, we discussed with GSA's Procurement Services Team responsible for service contracts and the contracting officer responsible for the ISI contract their knowledge of and response to the guards' complaints about ISI. They acknowledged that they were aware of some of the complaints, but not all. They said that they had assumed that the contracting officer's representative in Anchorage or the contract specialist in Auburn had taken care of the problems that GSA could or should have dealt with. They said that they had not reported the disputes between ISI and the guards to GSA's Labor Advisor in headquarters.

Although GSA did pursue with DOL whether the appropriate wage determination was being used, GSA did not refer complaints that the guards were not receiving the appropriate pay and fringe benefits under the wage determinations. FAR 22.1024 states that the contracting officer shall promptly refer, in writing to DOL, apparent violations and complaints received.

The contracting officer told us that as a result of the union's March 10, 1999, letter threatening a strike, a conference call was held that included her, the contract specialist, the president of ISI, the union local president, and the union's regional director in Seattle. She said that during the discussion, GSA's position was reiterated that the issues were between ISI and the guards and that GSA could not get involved. She said that when the call deteriorated into a "shouting match" between ISI and the union representatives, she recommended that the union and ISI ask NLRB to

assign a mediator to assist them in resolving the issues between them. Finally, she said she informed ISI of its responsibility to have sufficient resources available to man all posts in the event of a strike.

Effects of the Strike

Although we were unable to obtain from GSA complete or detailed information on the effects of the guards' strike, the strike resulted in potentially increased security risk to federal facilities in Anchorage for a period of time immediately after the strike began. Also, the strike cost GSA an undetermined amount of money.

The guards' strike against ISI was to officially begin at 12:00 noon on April 21, 1999. However, according to the contracting officer's representative, several striking guards left their posts about 15 minutes before noon. Those posts went unmanned for a short period of time before GSA could deploy replacement guards. In addition, Court Security Officers temporarily manned the post at the main entrance to AFOB after the contract guards left to begin their strike and before replacement guards arrived. Also, for an undetermined period of time, ISI was unable to find a sufficient number of qualified replacement guards to fully staff all posts. As a result, some posts were understaffed for a while, and FPS personnel supplemented contract guard personnel at other posts.

In addition, GSA sent two FPS officials from Auburn to Alaska for about 30 days at an undetermined cost to help respond to the strike and ensure that security needs were met during the period that ISI was attempting to find and hire qualified replacement guards. According to the contracting officer, GSA deducted money from its payments to ISI for those occasions during the strike when all posts were not fully staffed as required by the contract.

NLRB Charges

According to the union local president, in January 1999 he contacted the resident officer of NLRB's Anchorage office to discuss the guards' problems with ISI. Shortly thereafter, NLRB began an investigation, which culminated in NLRB bringing a list of unfair labor charges in August 1999 against ISI. We spoke with the NLRB resident officer in Anchorage about the charges. He said that in his opinion the guards had a number of legitimate complaints against ISI, and it was unfortunate that NLRB had not gotten involved in the dispute earlier so that a costly and disruptive strike might have been averted. He said that because he worked in AFOB he was aware that the guards were embroiled in a labor dispute with the contractor long before the union local president contacted him in January 1999; however, he was not asked to get involved prior to that time.

The National Labor Relations Act violation charges brought against ISI by NLRB included the following:

- In February 1999, ISI threatened the guards that they would be replaced if they did not sign waivers for being paid overtime when they worked 4 10-hour days.
- In February 1999, ISI bypassed the union by dealing directly with the guards on the overtime and 10-hour days issue.
- In February 1999, the union requested in writing that ISI provide certain information necessary for and relevant to the union's functioning as the exclusive bargaining agent for the guards; ISI refused to provide the information.
- In March 1999, ISI suspended one of the guards because he assisted the union and engaged in other protected, concerted, activities to assist the union.
- In April 1999, ISI fired the striking guards, and the right to strike is a protected activity.
- In May 1999, the striking guards made an unconditional offer to return to their former positions, but ISI refused to reinstate them.

The NLRB resident officer told us that a hearing on these charges was held before an NLRB administrative law judge in early 2000. A final ruling on these charges by NLRB had not been issued as of September 2000.

GSA Response to OIG Findings

The March 2000 GSA OIG report on the results of its audit of GSA's contract guard program made a number of recommendations to GSA's Assistant Commissioner, FPS, addressing the contract compliance and enforcement problems the OIG found. The Assistant Commissioner concurred with OIG's findings and recommendations; in May 2000, he issued a memorandum to all FPS Regional Directors specifying actions to be taken and guidelines to be implemented in response to the OIG audit. These actions and guidelines cover the following topics:

- background suitability and certification review of contract employees,
- controls and tracking of national contract guard examination policy,
- x-ray and magnetometer training for contract guards,
- contract supervision,
- contract compliance,

- post orders, and
- contract guard qualification certificates.

In addition, although GSA Region 10 was not included in the OIG audit, Region 10 FPS officials reviewed the contract guard program in the region in light of OIG's findings and found that several of the same problems existed. According to the Region 10 FPS Director, the region has begun taking corrective actions and implementing the FPS Assistant Commissioner's guidelines for improving the Region's administration of the contract guard program.

According to regional officials, the Region has recently taken actions to help address many of the issues discussed in this report. These include

- creating two contract manager positions with responsibility for, among other things, ensuring that the region's contract guard program meets the agency's goals and objectives;
- establishing a Regional Assurance Officer position to evaluate contracting programs and provide policy and guidance to regional contracting staff;
- meeting with the leadership of the guards' union to develop a better working relationship; and
- meeting with a GSA security services contractor in Seattle to discuss ongoing concerns and issues on that contract and their impacts on other regional security services contracts.

In addition, during the course of our review, the region established a Law Enforcement Security Officer position specifically for Anchorage and has designated that person as the contracting officer's representative for security guard contracts.

Conclusions

During most of the period of GSA's contract with ISI, the security guards were at odds with ISI over what they alleged were significant deficiencies in ISI's contract performance and determination and administration of the guards' pay and benefits. There were numerous pleas from the guards for GSA's help in resolving their disputes with ISI, but a number of the issues went substantially unresolved through much of the contract period. The contentious situation led to charges by some guards, the guards' union, and a company formed in part by two of the guards that GSA (1) was biased and had preselected the contractor in its award of two security guard contracts for AFOB; (2) used inappropriate DOL wage determinations, which resulted in unreasonably low guard wage rates; and (3) was unresponsive to the guards' allegations about ISI's compliance with the GSA contract and administration of their pay and benefits.

We found no evidence to support the charges that GSA was biased or preselected the contractor when awarding the contracts in question. GSA used the appropriate DOL wage determination on the interim contract. However, according to DOL's most recent position, its earlier advice to GSA appears to be incorrect, and GSA appears to have inadvertently used the wrong wage determination for the longer term contract for guard services in Anchorage. According to DOL, GSA should have used the most recent wage determination, which provided for a higher pay rate than the blanket wage determination GSA incorporated into the contract. Because of DOL's position, GSA said that it has questions about modifications to wage determinations and how they affect the use of blanket wage determinations. Thus, it is not yet clear whether GSA and DOL agree on this issue. GSA is uncertain whether its contracts for guard services reflect the appropriate wage determinations and whether the guards are receiving appropriate pay. DOL is unsure whether similar uncertainties exist at other federal agencies.

Also, another mistake by a GSA contracting officer could have cost GSA as much as $50,000 because the wrong overtime provisions were used on another contract.

Little documentation of GSA's responses to the guards' allegations of important ISI contract compliance deficiencies was available. However, on the basis of the information that was available, we believe that GSA did not make an adequate effort to address all the allegations and ensure that it was getting all that it had contracted and paid for. Further, we do not believe that GSA responded as the FAR prescribes or in a prudent manner to the guards' long-standing complaints about improprieties in ISI's administration of their pay and benefits. Although it would have been inappropriate for GSA to interfere in a labor-management dispute between the guards' union and ISI, we believe that GSA did not take appropriate action to refer the parties to an appropriate agency(s) responsible for dealing with such disputes, particularly given the nature of the service involved and the importance of uninterrupted contractor performance.

Frustrated with these long-unresolved issues and with the perceived lack of concern by GSA, the guards went on strike. Specific information on what the strike cost GSA or how it affected safety and security at federal facilities in Alaska was unavailable. However, GSA spent money to bring additional FPS personnel to Alaska during the strike, and the strike resulted in potentially increased risk to security when some posts at federal facilities in Alaska were unstaffed or understaffed.

GSA's OIG recently found contract oversight and enforcement problems in GSA's administration of its national security guard contract program similar to those that the guards alleged at AFOB during the ISI contract. GSA agreed with OIG's findings and recommendations and has said that it is taking actions nationwide that should help prevent future contract oversight and enforcement deficiencies like those OIG found and those that were alleged to have occurred on the contract with ISI. Further, Region 10 has reportedly taken several steps to improve its efforts for meeting its responsibility for enforcing guard services contracts and seeing that the region's contract guard program meets the agency's goals and objectives.

Addressing contract enforcement and oversight problems is a significant step in the right direction by GSA. Further, we believe that when fully implemented, the specific actions reported by Region 10 may help to preclude problems in the future with its oversight and enforcement of security guard contracts similar to those that appear to have occurred during its contract with ISI in Alaska. However, the region may need to take additional steps to make certain that appropriate resources are brought into play to help resolve significant issues between its contractors and their employees when it appears that contracted services may be interrupted or adversely affected. This issue was not specifically addressed in the reviews done by GSA's OIG or Region 10's FPS.

Recommendations to the GSA Administrator and the Secretary of Labor

We recommend that the Administrator, GSA, direct appropriate GSA officials to ensure that

- Region 10 contracting officers and other appropriate personnel, such as FPS program staff helping to administer security services contracts, are aware of their responsibility to take the steps necessary to bring appropriate federal or other resources to bear to help resolve conflicts between GSA contractors and their employees when there are indications that interruptions or other adverse effects on contracted services could result;

- the causes of the mistakes by Region 10 contracting officers, such as those that led to the use of the wrong overtime provisions on contracts, are determined and, if necessary, appropriate training and supervision are provided to help prevent these mistakes in the future;

- an understanding is reached with DOL on how wage determination revisions affect the blanket wage determination program;

- GSA contracting officers at all locations where blanket wage determinations are used understand how the blanket wage determination program is affected by DOL's wage determination revisions; and

- GSA's contract for guard services in Anchorage reflects the correct wage rates and that the guards receive all the pay to which they may be entitled for the entire contract period.

We also recommend that the Secretary of Labor have appropriate DOL officials advise federal agencies of the appropriate procedures to follow when wage rates covered by blanket wage determinations are revised.

Agency Commments and Our Evaluation

We requested comments on a draft of this report from the Administrator of GSA. We received written comments from GSA's Region 10 Regional Administrator, which stated that the comments had been shared with and approved by GSA's central office. The Regional Administrator stated that he agreed with our findings and recommendations and reiterated the actions undertaken and planned by the region that we described in our report and that he believes correspond to the recommendations in our report. Appendix II contains the written comments we received from the Regional Administrator.

We also requested comments on a draft of this report from the Secretary of Labor. We received oral comments from the Director, Office of Wage Determination, Wage and Hour Division, Employment Standards Administration. The Director said that the draft report's discussion of the wage rate determinations for GSA's interim and most recent contracts for guard services in Anchorage needed to be revised. He said that the advice a DOL supervisor gave to GSA on the appropriate wage determination to use apparently was incorrect. He said that it would appear that GSA was required to use the more current wage determination instead of the blanket wage determination because once GSA became aware that the wage determination had been revised, GSA was obligated to use the more current wage determination for both the interim and longer term contracts. He acknowledged that similar confusion could exist at other agencies regarding the appropriate handling of revisions to wage rates where blanket wage determinations are being used.

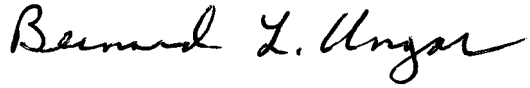
We revised the report to reflect DOL's comments. In addition, we made additional recommendations in the report to the GSA Administrator on the basis of the new information DOL provided in its comments. Further, as a result of DOL's comments, we included in the report a recommendation to the Secretary of Labor.

The GSA Assistant Regional Administer, Public Buildings Service, Region 10, provided us oral comments on the revised draft, including the additional recommendations to the GSA Administrator. He said that GSA agreed with the report's revisions and the additional recommendations. The Director of DOL's Office of Wage Determination, Wage and Hour Division, Employment Standards Administration, also provided us oral comments on the revised draft and said that DOL agreed with the draft report's revisions and with our recommendation to the Secretary. Further, he said that his office had already begun drafting letters to be sent to federal agencies that use blanket wage determinations clarifying DOL's position.

We are sending copies of this report to Senator Frank Murkowski and Senator Ted Stevens of Alaska; Senator Thad Cochran, Chairman, and Senator Daniel Akaka, Ranking Minority Member, Subcommittee on International Security, Proliferation and Federal Services, Senate Committee on Governmental Affairs; Representative Tillie Fowler, Chairman, and Representative James Traficant, Jr., Ranking Democratic Member, Subcommittee on Oversight, Investigations, and Emergency Management, House Committee on Transportation and Infrastructure; Senator James Jeffords, Chairman, and Senator Edward Kennedy, Ranking Minority Member, Senate Committee on Health, Education, Labor, and Pensions; Representative William Goodling, Chairman, and Representative William Clay, Ranking Minority Member, House Committee on Education and the Workforce; the Honorable David Barram, Administrator of GSA; the Honorable Alexis Herman, Secretary of Labor; and the Honorable Jacob Lew, Director of the Office of Management and Budget. We will make copies available to others upon request.

If you have any questions regarding this report, please contact me on (202) 512-8387 or Sherrill Johnson on (214) 777-5600. Key contributors to this assignment are acknowledged in appendix III.

Sincerely yours,



Bernard L. Ungar
Director, Physical Infrastructure

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Abbreviations

AFOB	Anchorage, AK, Federal Office Building
DOJ	Department of Justice
DOL	Department of Labor
FAR	Federal Acquisition Regulation
GSA	General Services Administration
ISI	International Services, Inc.
MOU	memorandum of understanding
NLRB	National Labor Relations Board
OIG	Office of the Inspector General
UGSOA	United Government Security Officers of America

Scope and Methodology

To evaluate the General Services Administration's (GSA) actions in awarding the two most recent contracts for security services in Alaska, we identified and reviewed the applicable federal laws, Federal Acquisition Regulations (FAR), and governmentwide guidance for awarding service contracts. We also identified and reviewed GSA's implementing regulations for these laws and guidance. We met with GSA contracting officials at GSA's headquarters in Washington, D.C.; GSA's Region 10 headquarters in Auburn, WA; as well as at the Anchorage Federal Office Building (AFOB) in Anchorage. We also reviewed the official records of each acquisition and discussed these laws, guidance, and GSA's implementing regulations with the specific GSA contracting officials responsible for the acquisitions. We reviewed each of the solicitations to determine whether evidence of preselection or bias on the part of GSA existed.

Further, we discussed with the GSA contracting officials the key decisions in their evaluation of the offers received, and we specifically examined the rationale and legal support for decisions to eliminate certain offers from consideration and for determining the successful offerors. We discussed the rationale for any deviations from the optimum times prescribed in the FAR to advertise GSA's intentions to procure the services and to allow offerors to prepare and submit offers responding to the solicitations.

To determine whether GSA used the appropriate Department of Labor (DOL) wage determination in the solicitations and contracts for security services in Alaska for the three contracts awarded and two contract options exercised during the period 1996 through 1999, we reviewed Region 10's contracting policies and practices for the use of DOL wage determinations. Also, we obtained and reviewed the Memorandum of Understanding between GSA and DOL, which augmented guidance provided in federal regulations and defined specific procedures GSA's Region 10 was to use to establish wage and benefit rates for contract security guards. We discussed the process with Region 10 Procurement Services Team officials and members and reviewed applicable records to verify whether actions had been taken to update the wage determinations each year and whether the appropriate wage determinations were used on the contracts we examined. We also discussed the wage determination process with an appropriate DOL official at DOL headquarters in Washington, D.C.

We met with the president, United Government Security Officers of America (UGSOA) Local #46, in Anchorage to determine the specific key allegations of the security guards employed by International Services, Incorporated (ISI) concerning GSA's (1) use of DOL wage determinations,

(2) award of two contracts for security services for GSA-managed facilities in Alaska, and (3) responses to the guards' allegations of unfair labor practices by ISI and oversight of ISI's performance as measured against the terms and provisions of the security services contract. We discussed the union's experiences in reporting its allegations to GSA with the union local president. Also, we obtained additional documentation on the allegations made by the union from union headquarters, the Local, and GSA. Additionally, we reviewed the extensive record of correspondence on these allegations between and among the individual guards and union officials, GSA, and officials of other federal and state agencies.

Also, regarding GSA's oversight of ISI's performance specifically, we reviewed the FAR and GSA regulations pertinent to contract oversight responsibilities by government agencies and contracting officers. Further, we reviewed the pertinent correspondence, including electronic mail exchanged between and among GSA officials addressing the guards' allegations; and we reviewed records of pertinent meetings involving the guards, their union, and GSA contracting officials. We discussed these issues with the president of the union local, GSA's contracting officer, the contracting officer's representative, the contract specialist, and other responsible contracting officials in GSA's Region 10.

Further, in addressing this issue, we obtained and evaluated the facts involved in the union's allegations and GSA's responses. We did not attempt to determine the validity of the allegations beyond information that was available from the documents and oral testimony provided by officials of the union, GSA, and other federal and state agencies that addressed aspects of some of the allegations.

We also discussed with officials of the National Labor Relations Board (NLRB), Region 19, in Anchorage and in Seattle, the formal charges the union filed against ISI alleging unfair labor practices in violation of the National Labor Relations Act. We discussed with the NLRB Resident Officer in Anchorage the nature of the charges and whether GSA had reported the labor problems between the union and ISI to NLRB.

We discussed the information contained in a draft of this report with officials of GSA's Region 10 and with DOL. We made changes and incorporated their comments where appropriate. Also, we requested comments on a draft of this report from the GSA Administrator and the Secretary of Labor. Their comments were considered in preparing our final report. We did our work from October 1999 to September 2000 in accordance with generally accepted government auditing standards.

Comments From the General Services Administration

September 7, 2000

MEMORANDUM FOR DAVID J. BARRAM
ADMINISTRATOR (A)

FROM: L. JAY PEARSON
REGIONAL ADMINISTRATOR (10A)

SUBJECT: Security Guard Service, Anchorage, Alaska

We are providing our comments in response to the draft GAO report on the results of contract award and administration issues for several GSA security guard service contracts at the Federal Building and U.S. Courthouse (AFOB) in Anchorage, AK (job code 240374).

We are pleased that GAO found no evidence to support the first, and quite frankly most disturbing allegation, that this region was biased or pre-selected the contractors who were awarded the two most recent contracts for security services at the AFOB.

The second allegation suggests that GSA used inappropriate wage determinations for compensating the contract security guards under contracts awarded by GSA for guard services at AFOB since 1996. However; GAO found that a non-standard wage determination was used for only two months, in August and September of 1999, while an interim contract was in force. The interim contract was procured locally while the permanent contracts were procured by regional office contracting staff. Though the process used was completely legal, the local procurement official did not use the region's standard blanket wage determination (BWD) method to set wages under this interim contract. We became aware of the use of the non-standard method of wage determination immediately after the interim contract was awarded and took action to correct it in the succeeding contract and to ensure that such local variations would not occur in the future.

In discussions with GAO on their original draft report, we objected to their use of the term "wrong" associated with the wage determination, and suggested that the term "non-standard" would be a more accurate reflection of what transpired. In the final draft, GAO did refrain from using the term "wrong", choosing instead words like "did not use the correct" and "inappropriate." We still believe that the wage determination used in the interim contract, while not our standard practice, was not a violation of law or regulation.

We have appointed, within Region 10 PBS, a Regional Assurance Officer, who has primary responsibility for reviewing regional contract compliance issues and providing guidance and training to this region's PBS contracting staff. The Assurance Officer has

provided written instruction on the use of the BWD and made clear the application of overtime provisions in Alaska.

The third allegation is that GSA did not respond appropriately to contract guard concerns at AFOB. This is consistent with the GSA Inspector General's finding that contract enforcement and oversight has been inconsistent in his audit of the FPS's Contract Guard Program in other regions. Until the reinvention of the Federal Protective Service in the spring of 1999, the relationship between the contract guards and the Federal Protective Service (FPS) CORs, was usually divisive, or hands-off at best. This was the result of the view held in some quarters of FPS that contract guards were a threat to in-house FPO staffing.

Beginning in early 1999, Region 10 PBS leadership began an aggressive and progressive program to improve overall security at the AFOB, including improving the relations with and addressing the concerns of the contract guards. The Region's first Law Enforcement and Security Officer (LESO) was hired and placed at the AFOB. The LESO was provided COR training and designated as the COR.

We have met with our security guard service contractors in Alaska and those responsible for security guard services in Oregon and Washington, to ensure that they understand that things have changed. Our PBS Assistant Regional Administrator (ARA) has said, "we will not be a shield for management, nor a foil for labor. We will work diligently to ensure that the requirements of the contract are met."

We have established a very positive relationship with the leadership of the union that represents this region's contract guards. We took the initiative to invite the leaders of the International Union of United Government Security Officers of America to the regional office for face-to-face meetings. In addition to the Regional Administrator, the PBS ARA and the Assurance Officer, they met with the leadership of the FPS and our contracts staff. Since that time we have had a continuing open dialogue, at all levels of our organization, with labor leadership and have effectively responded to issues they have raised.

Finally, we are in the process of selecting two FPS contract managers, whose sole responsibility will be to ensure that FPS guard service contract requirements are being met. They will work closely with the CORs and the contracting officers to ensure that contract guard issues receive appropriate attention.

We are pleased that GAO recognized the actions that Region 10 has taken to date. We accept the recommendations made by GAO and, as demonstrated above, we have already undertaken actions that correspond to those recommendations and that continue to move our program in the proper direction.

We appreciate the opportunity to comment on this draft report.

GAO Contacts and Staff Acknowledgments

GAO Contacts

Bernard L. Ungar (202) 512-8387

Sherrill H. Johnson (214) 777-5600

Acknowledgments

In addition to those named above, Victor B. Goddard, Robert T. Griffis, Adam Vodraska, and William T. Woods made key contributions to this report.

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