Review of Formation Issues Regarding the Department of Education's Fiscal Year 2003 Contract with Ketchum, Inc. for Media Relations Services

FINAL REPORT

ED-OIG/A19-F0007
April 2005

Our mission is to promote the efficiency, effectiveness, and integrity of the Department's programs and operations.

U.S. Department of Education
Office of Inspector General
Washington, DC

Statements that managerial practices need improvements, as well as other conclusions and recommendations in this report represent the opinions of the Office of Inspector General. Determinations of corrective action to be taken will be made by the appropriate Department of Education officials.

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UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF INSPECTOR GENERAL

THE INSPECTOR GENERAL

April 15, 2005

MEMORANDUM

TO: Margaret Spellings
Secretary of Education

FROM: John P. Higgins, Jr. /s/

SUBJECT: Final Report
Review of Formation Issues Regarding the Department of Education's Fiscal Year 2003 Contract With Ketchum, Inc. for Media Relations Services
Control Number A19-F0007

Attached is the subject final report that covers the results of our review of formation issues regarding the Department of Education's Fiscal Year 2003 contract with Ketchum, Inc. for Media Relations Services. We received your comments accepting our findings and concurring with the recommendations in our draft report. As a result, no changes were made to the report.

Corrective actions proposed (resolution phase) and implemented (closure phase) will be monitored and tracked through the Department's Audit Accountability and Resolution Tracking System (AARTS). Department policy requires that you develop a final corrective action plan (CAP) for our review in the automated system within 30 days of the issuance of this report. The CAP should set forth the specific action items, and targeted completion dates, necessary to implement final corrective actions on the findings and recommendations contained in this final report.

In accordance with the Inspector General Act of 1978, as amended, the Office of Inspector General is required to report to Congress twice a year on the reports that remain unresolved after six months from the date of issuance.

In accordance with the Freedom of Information Act (5 U.S.C. §552), reports issued by the Office of Inspector General are available to members of the press and general public to the extent information contained therein is not subject to exemptions in the Act.

We appreciate the cooperation given us during this review. If you have any questions, please call me at 202-245-6900.

Enclosure

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EXECUTIVE SUMMARY

In December 2002, the Department of Education's (Department) Office of Public Affairs (OPA) finalized a Statement of Work (SOW) to obtain a contractor to assist with several facets of media relations services. The contractor was expected to develop a comprehensive long-range communications strategy for the Department to communicate information to the public on No Child Left Behind (NCLB) legislation and implementation.

The SOW indicated that task orders or work requests would be issued for specific projects and the period of performance would be one year with three option years. After completing a formal competition process, the Department awarded the media relations services contract to Ketchum, Inc. (Ketchum) on May 14, 2003.

During 2003, the Department contemplated work on an outreach campaign to disseminate NCLB information to minority and economically disadvantaged parents. The Department initiated work on this campaign because management believed details regarding NCLB programs were not being conveyed to those who could most benefit from them.

The Department selected the Graham Williams Group (GWG) to perform work relating to the minority outreach campaign. Services of the GWG were acquired through the Ketchum contract by directing Ketchum to utilize the GWG as the subcontractor. Two separate work requests involving the GWG were issued under the Ketchum contract. The first work request was effective December 2, 2003, in the amount of $113,441.06. The second work request was effective June 25, 2004, in the amount of $139,490.56.

The objective of this inspection was to determine whether the initial award to Ketchum and the subsequent work requests involving the GWG were in compliance with the Federal Acquisition Regulations (FAR) and other pertinent contract law. We also reviewed the effectiveness of the oversight function with respect to the Ketchum contract and the GWG work requests.

Overall, we noted no violations of pertinent contract law and found no evidence of any ethical violations in the formation of the Ketchum contract and GWG work requests. We did find that Department officials made some poor management decisions, including the failure to provide critical information to decision makers, and exercised poor judgment and oversight. As a result, the Department paid for work that most likely did not reach its intended audience and paid for deliverables that were never received. The advertisements (ads) that were produced under the work requests appear to be of poor quality, and the Department has no assurance the ads received the airtime for which it paid. The documentation we reviewed appears to indicate payment was attributed solely to the production of ads and airtime. However, because other activities relating to commentary were included in the SOWs and activity reports, and because the invoices received and paid by the Department were vague, the appearance is that the Department may have been paying for more than just the advertising.

The Department accepted our findings and concurred with our recommendations. The full text of the Department's response is included as Attachment 1 to this report. The Department's response does not warrant any changes to the draft report.

BACKGROUND

In late 2002, the Department of Education's (Department) Office of Public Affairs (OPA) planned to acquire media relations services by contracting with a public relations firm. OPA management believed these services were needed because of staff and resource limitations within the Department to perform these functions. The Department had previously contracted for these types of services on a smaller scale.

The Department chose to contract for these services through the use of the General Services Administration (GSA) schedule. The Department developed a Statement of Work (SOW) for the proposed acquisition that was reviewed and finalized during December 2002. Prospective contractors were expected to perform various tasks including: 1) developing a comprehensive long-range communications strategy for the Department to communicate information on No Child Left Behind (NCLB) legislation and implementation to the public; 2) developing short-range strategies to disseminate information on specific topics related to NCLB, and 3) providing technical and production support and consulting services to OPA.

The Department requested proposals in response to the SOW through correspondence dated December 20, 2002. A total of six contractors were selected to participate in this process. The Department received five responses by January 9, 2003, and created a Technical Review Panel to evaluate and score these proposals in accordance with established rating criteria. The panel completed this process on April 24, 2003, concluding that the proposal submitted by Ketchum Inc. (Ketchum) offered the best overall proposal, would be extremely capable of meeting the requirements outlined in the Statement of Work, and had specific experience working on NCLB issues. As a result, the Department awarded an indefinite delivery indefinite quantity contract with a base amount of $100,000 to Ketchum on May 14, 2003. The Ketchum contract was for an initial one-year period with three renewal options.

Once awarded, the Department issued multiple task orders and work requests under the Ketchum contract. This included two work requests for minority outreach programs relating to NCLB, which required Ketchum to subcontract with the Graham Williams Group (GWG). The first work request was effective December 2, 2003, in the amount of $113,441.06. The second work request was effective June 25, 2004, in the amount of $139,490.56.

INSPECTION RESULTS

The following presents the results of our review with respect to the contract formation issues for the Fiscal Year (FY) 2003 Ketchum contract and related work requests with the GWG, and provides additional information relating to contract oversight of the GWG work requests.

The Department accepted our findings and concurred with our recommendations. The full text of the Department's response is included as Attachment 1 to this report. The Department's response does not warrant any changes to the draft report.

Formation of the Ketchum Contract

We determined the processes followed by the Department in the formation of the Ketchum contract were generally appropriate. From the review completed, we noted no violations of pertinent contract law in the pre-award, evaluation, or award processes as they related to the Ketchum contract. Specifically, we determined the Department:

- Considered other contracting options before choosing to utilize the GSA schedule;
- Was justified in using the GSA schedule as a contracting vehicle;
- Selected the proper Special Item Number (SIN) for contracting under the GSA schedule;
- Developed a SOW for the contracting effort that was generally in accordance with Federal Acquisition Regulation (FAR) requirements;
- Requested proposals from an adequate number of contractors in accordance with the FAR; and
- Reviewed and scored proposals in accordance with FAR requirements.

Additional details relating to the process followed in the formation of this contract are presented below.

In early 2002, Office of the Secretary (OS) and OPA officials began discussing the possibility of acquiring media relations services by contracting with a public relations firm. These services were deemed necessary due to staff and resource limitations within the Department to perform these functions, specifically with regard to the dissemination of information related to the NCLB Act that had been recently signed into law. OS and OPA officials also indicated the Department was receiving a lot of pressure from "the Hill" and the White House to effectively communicate information on NCLB.

According to OPA and OS officials, the Department had contracted for these types of services on a smaller scale prior to the FY 2003 Ketchum contract. The previous contract for these services was with ZGS Communications, Inc (ZGS). OPA officials believed ZGS was not large enough to effectively assist the Department in developing and implementing a strategy to communicate information regarding NCLB.

OS and OPA officials proceeded to contract for media relations services in late 2002 through the use of the GSA schedule. According to OPA and OS officials, the decision to use the GSA schedule was made in part due to the speed in contracting through this method. Documentation in the contract files showed the Department had also considered other contracting options such as full and open competition and existing Multiple Award Task Order Contracts. We found nothing in applicable guidance to prohibit the use of the GSA schedule for this procurement. The Department selected SIN 738-8 *"Full Service Marketing Media, and Public Information Services"* for this procurement. We reviewed available descriptions of services provided under this SIN and determined the Department selected the proper SIN for this acquisition.

The Department developed a SOW for the proposed acquisition. Documentation in the contract files indicated the SOW was reviewed and finalized in December 2002. We reviewed the SOW and determined it generally complied with the related requirements of FAR Subpart 8.4.

The Department subsequently requested proposals in response to the SOW from six selected contractors, including the incumbent, through correspondence dated December 20, 2002. The process followed by the Department exceeded the applicable FAR requirements to seek offers from at least three schedule contractors that offer services that will meet the agency's needs.

The Department received five responses by January 9, 2003, and created a Technical Review Panel to evaluate and score these proposals in accordance with established rating criteria. The panel consisted of three individuals—two from the Office of Intergovernmental and Interagency Affairs that were noted as having previous experience with public relations contracts, and a management analyst from OS. The panel completed the evaluation process on April 24, 2003, concluding that Ketchum offered the best overall proposal, would be extremely capable of meeting the requirements outlined in the Statement of Work, and had specific experience working on NCLB issues. We found no evidence to indicate that members of the Technical Review Panel were biased or were pressured to select Ketchum as the contractor for these services. We also found no indication that the SOW and/or evaluation criteria were developed in a way that would favor Ketchum over any of the other contractors invited to submit proposals.

The panel's report to the Contracting Specialist recommended award to Ketchum. As a result, the Department awarded an indefinite delivery indefinite quantity contract with a base amount of $100,000, funded with OS administrative funds, to Ketchum on May 14, 2003. The contract includes three option periods that could extend the contract through May 13, 2007.

Formation of the GWG Work Requests

We found that the process followed in the development and issuance of the GWG work requests did not explicitly violate provisions of pertinent contract law. We did note noncompliance with subcontracting terms associated with the Department's contract with Ketchum. We also noted other concerns with the formation process for these work requests. Formation activities did not always conform to contracting best practices, and activities did not ensure that potential weaknesses were identified and corrected. Overall, the formation process contributed to problems later experienced in the execution of the GWG work requests.

Specifically, we identified the following noncompliance and concerns with respect to the formation of these work requests:

- The SOWs issued by the Department were not consistent with performance based contracting preferences identified in FAR Subpart 37-6;
- Documentation was not provided as required in the overall Ketchum contract Statement of Work, Section V.D., Contractor Personnel- Subcontractors;
- The Department's direction to use a particular subcontractor gave the appearance of circumventing competition in contracting;
- The Department lost the opportunity to obtain Ketchum's "expert advice" on how to best conduct a minority outreach campaign by directing Ketchum to utilize the GWG;
- The Department did not obtain assurance that the GWG offered the best value to the government with respect to conducting a minority outreach campaign;
- The Department and Ketchum did not recognize that information submitted by the GWG indicated the demographic makeup of its audience was not consistent with that targeted by the Department;
- Activities relating to favorable NCLB commentary were included in the SOWs, providing the appearance the Department was buying more than just advertising;
- Department officials involved in the decision to proceed with the issuance of the second work request did not receive information that could have assisted them in making a fully informed decision.

We noted no ethical violations in the formation of the work requests. We did identify other factors that may have contributed to the Department's rationale for entering into the arrangement with the GWG. Additional details relating to the process followed in the formation of the GWG work requests are presented below, followed by a detailed analysis of issues noted.

Formation of the First GWG Work Request

In an effort to generate additional business for the GWG, Armstrong Williams, President and Chief Executive Officer of the GWG, submitted a business proposal to the former Secretary of Education, during a meeting both were attending at the Department in March 2003. Mr. Williams indicated the GWG was attempting to use available opportunities to gain business, and had issued proposals to other Government agencies as well. According to the former Secretary, the proposal was subsequently passed along to his Chief of Staff (A)[1]. The former Secretary and former Chief of Staff (A) both noted that the Secretary received many proposals from people looking to pursue business opportunities with the Department. They both indicated the standard practice was for the Secretary to provide the Chief of Staff with the proposal so that the proposal could be vetted with appropriate Department officials to determine whether it had any merit.

The former Chief of Staff (A) convened a meeting with the former Director of OPA in late March 2003, and subsequently passed the proposal along to him for further consideration. Apparently no immediate action was taken with regard to the proposal. As a result of follow-up

[1] Two different Chiefs of Staff served the former Secretary during the formation of the Ketchum and GWG work requests. To differentiate between the two, we have labeled them as A and B. Chief of Staff (A) left the Department in October 2003.

calls from Mr. Williams, the former Secretary indicated he again requested his Chief of Staff (A) and Director of OPA to look into the merits of the proposal and make a determination about it one way or the other.

The former Director and Deputy Director of OPA met with Mr. Williams at the Department in the Fall of 2003 to further discuss the services the GWG could provide with regard to NCLB outreach. OPA management was considering the development of a minority outreach campaign, with the purpose being the dissemination of NCLB information to minority and disadvantaged communities. Management officials considered an outreach campaign necessary because they believed these communities could benefit most from NCLB and needed to know more about the programs and services available.

While the Deputy Director indicated she did not believe it was a good idea to pursue the relationship with the GWG any further, the former Director felt otherwise. The OS Executive Officer stated OPA or OS management subsequently approached her regarding contracting directly with the GWG for the minority outreach campaign. The OS Executive Officer stated she informed management that to accomplish this, either a competitive contracting process or justification for sole source contracting would be required. She stated that she mentioned pursuing the use of the GWG as a subcontractor under the existing Ketchum contract.

In November 2003, the former Director of OPA contacted Ketchum officials and asked for a meeting to discuss a minority outreach effort. Ketchum officials indicated the meeting was basically to let Ketchum know that the Department wanted to use the GWG for a minority outreach program under the existing Ketchum contract, and they were to contact Mr. Williams immediately to proceed. Ketchum officials also indicated the former Director of OPA told them how much money could be spent on the task. Ketchum officials indicated this was different from how the task order/work request process worked previously under this contract, indicating that usually ideas would be discussed and Ketchum would subsequently submit a proposal that would include cost estimates. Ketchum officials stated that on other work under the contract they had selected the subcontractor after conducting research on different options to ensure the best price and product was obtained. Ketchum officials also indicated that most of their communication with the Department up until this point had been with the Deputy Director of OPA as opposed to the Director.

Ketchum officials indicated a meeting took place between them and Mr. Williams a few days later, and it appeared Mr. Williams was already aware of the effort and had already created a television advertisement. Mr. Williams indicated to OIG that the cost associated with the level of services he provided was well below what he would normally charge. Because he believed in NCLB and wanted the business, Mr. Williams agreed to perform for the cost the Department was willing to pay. Mr. Williams subsequently provided a written proposal to Ketchum detailing the GWG's services and the costs agreed upon.

Ketchum officials stated they used the GWG proposal noted above with limited modifications to prepare their own proposal to the Department. Ketchum's proposal was provided to the Department via correspondence dated November 17, 2003, addressed to the former Director and the Deputy Director of OPA. This proposal "recommended" the use of the GWG subsidiary,

Right Side Productions, for television and radio advertising and specified work that would be completed under this project. The proposed deliverables included:

- Creation and placement of two television and two radio ads;
- Providing Department officials with the option to appear as studio guests to discuss NCLB and other important education reform issues;
- Mr. Williams using his long term working relationship with America's Black Forum to encourage the producers to periodically address NCLB.

The body of the Ketchum proposal also indicated that Mr. Williams would regularly comment on NCLB during the course of his broadcasts and would work with African-American newspapers to place stories and commentary on NCLB. The resulting SOW, which was prepared by the Contracting Officer's Representative (COR) within OPA, mirrored the Ketchum proposal and included each of the deliverables identified above. The body of the SOW also stated that Ketchum should arrange for Mr. Williams to regularly comment on NCLB during the course of his broadcasts.

A contract modification was signed by Department contracting officials on January 6, 2004, with an effective date of December 2, 2003. This increased the Ketchum contract by $113,441.06, to complete the minority outreach campaign.

Formation of the Second GWG Work Request

OPA and OS officials indicated that as the first work request expired in May 2004, the Department was contemplating whether to continue the minority outreach program by awarding a second work request through Ketchum to the GWG. An undated SOW to continue the campaign was prepared. This SOW was virtually identical to that issued for the first campaign.

In response to the SOW, Ketchum submitted a proposal to the Department dated May 18, 2004, addressed to the Contracting Officer (CO), the Deputy Director of OPA and the COR. In addition to the work requested in the SOW, the Ketchum proposal recommended the campaign include developing commentary for several African American newspapers.

While the former Director of OPA was indicating he believed the campaign was successful due to the increased number of visits to the NCLB website, both the Deputy Director of OPA and the former Chief of Staff (B) indicated they raised concerns with continuing the campaign. Their concerns included the cost of the program, the inability to measure the effectiveness of the program, and the inherent conflict of Mr. Williams' role as both a public relations executive and commentator. These concerns were raised to the former Secretary and former General Counsel prior to the issuance of the second work request. The concerns were so strong that both the Deputy Director of OPA and the former Chief of Staff (B) stated that, prior to the issuance of the second work request, they each called the Special Assistant to the President for Domestic Policy

responsible for education issues at the White House, who indicated he agreed with their concerns. [2]

According to the former Chief of Staff (B), after she expressed her concerns to the former Secretary, he asked her whether it was illegal, and indicated his main concern was with reaching the minority community. She subsequently asked the Department's former General Counsel to review the second work request to determine whether there were any legal reasons to not go forward with it, and expressed her desire to find a way to stop it. [OGC did not review the first minority outreach campaign work request, as it was not Department policy to have a legal review of such documents before they were issued.] The former General Counsel stated he asked his Deputy General Counsel for Departmental and Legislative Service to review and comment on the work request documents provided by the former Chief of Staff (B). [We have determined this was the May 18, 2004 proposal from Ketchum.]

On June 2, 2004, the Deputy General Counsel provided an analysis in an e-mail sent to the former General Counsel and his Chief of Staff. The analysis concluded the best course of action and main option available at that point in time was to withdraw the SOW. The communication stated there was nothing clearly erroneous with the proposal, however a weak argument could be made that the proposal may possibly run afoul of Federal statutes prohibiting use of appropriated funds for publicity or propaganda purposes. The analysis also mentioned the concern over whether the purchase of access to media and news programs was appropriate, even with full attribution to the Department, noting it was not squarely addressed in the statutory prohibitions cited.

The communication indicated once additional documentation was obtained, specifically the overall Ketchum contract and the SOW, it would be reviewed and any updated analysis would be provided. [We were not provided with any updated analysis relating to the second work request. As noted above, the SOW was virtually identical to the Ketchum proposal that was reviewed.]

The former General Counsel informed us that he subsequently told the former Chief of Staff (B) that the Department had the option to withdraw the work request if services were no longer deemed necessary, but there was no legal reason not to proceed. In a subsequent meeting between the former General Counsel and former Secretary, the former General Counsel stated he was asked simply to answer a very narrow question—whether the work request was legally defensible or not— to which he stated it was. He did not share the written analysis from his Deputy or convey any of the concerns noted in it with the former Secretary or with the former Chief of Staff (B). The former General Counsel indicated his impression was the former Secretary would not have been interested in the information. The former Secretary confirmed that he had a brief discussion with the former General Counsel and had asked about whether the process was legal. He stated that his only point of interest was in getting the correct word out about NCLB, and since the former Director of OPA assured him the Department was receiving

[2] During a meeting between White House and Department officials on July 13, 2004, pertaining to communications strategy, the Special Assistant to the President for Domestic Policy briefly questioned the Deputy Director of OPA about the status of the Williams' work request. The Deputy Director stated she was unsure of the status. No further discussion ensued on the subject until a few days after the meeting, when the former Chief of Staff (B) contacted the Special Assistant to inform him the work request had already been signed and issued on June 25, 2004.

value from the work, and OGC assured him it cleared "legal muster", he subsequently supported the renewal.

On June 25, 2004, the second work request, funded with OS administrative funds in the amount of $139,490.56, was signed and placed into effect.

OIG Analysis of Work Request Formation

As stated previously, while we did not note explicit violations of pertinent contract law, we did note noncompliance with contract terms, as well as concerns with formation activities that did not always conform to contracting best practices, and activities that did not ensure that potential weaknesses were identified and corrected. We also identified factors that may have contributed to the Department's rationale for entering into the arrangement with the GWG. A detailed analysis of the issues noted follows below.

Performance-Based Contracting

Overall, we noted the SOW issued by the Department defined specific tasks to be performed by the contractor, and did not provide for any mechanism by which to measure the performance and effectiveness of the campaign. The SOW included the length of ads, number of ads to be run, and times and stations on which the ads were to be run. This was not consistent with performance based contracting preferences identified in the FAR.

FAR Subpart 37.102, "*Policy*" states that:

> *Performance-based contracting is the preferred method for acquiring services. When acquiring services, including those acquired under supply contracts, agencies must- [u]se performance-based contracting methods to the maximum extent practicable...*

FAR Subpart 37.602-1 states that:

> *(b) When preparing statements of work, agencies shall, to the maximum extent practicable –*
>
> > *(1) Describe the work in terms of "what" is to be the required output rather than either "how" the work is to be accomplished or the number of hours to be provided (see 11.002(a)(2) and 11.101);*
> > *(2) Enable assessment of work performance against measurable performance standards...*

Compliance with Contract Terms

We noted the terms of the overall Ketchum contract were not met with regard to the use of subcontractors. Per section V.D. of the SOW, the contractor was permitted to subcontract parts of the work of the overall contract as long as evidence was presented that the subcontractor had agreed in writing to perform and that the contractor had effective control of the subcontractor. A separate statement by the subcontractor to this effect was also to be included with Ketchum's

proposal for the related work, prior to the actual issuance of the subcontract. Neither the Department, Ketchum or the GWG could provide any documentation to support compliance with this requirement, and none of the parties noted appeared to even be familiar with this requirement.

Selection of Subcontractor

- Although not explicitly prohibited, the Department used the Ketchum contract as a vehicle to acquire the services of the GWG without completing a competitive process or sole source justification. The Department's contract with Ketchum did not include the relevant clause from the FAR requiring competition in subcontracting, however the Department's direction to use a specific subcontractor still gives the appearance of circumventing competition. The Department's Contracts and Acquisition Management (CAM) staff stated that they would normally question the specification of a subcontractor in a task order/work request, however they did not in this instance as they considered this to be a special circumstance because it involved OS.

- We noted one purpose of the overall Ketchum contract was to obtain "... expert advice on the development of multimedia communications plans that shall ensure [Department] materials and messages reach their intended audiences." By directing Ketchum to utilize a particular subcontractor, the Department lost the opportunity to obtain "expert advice" on how to best conduct this campaign.

- Ketchum officials stated they proceeded with the subcontracting arrangement in November 2003, under the assumption that the Department had gone through a proper process in making the selection and had considered different subcontractors to get the best price and product. However, the Department had not conducted work to gain assurance that the GWG offered the best value to the government prior to directing Ketchum to use the GWG for the minority outreach campaign. As a result, neither the Department nor Ketchum effectively screened the performance capabilities or cost effectiveness of using the GWG.

Office of Federal Procurement Policy (OFPP) Policy Letter 93-1, *Management Oversight of Service Contracting*, Section 6, *Policy,* states in part:

> *When contracting for services, it is the policy of the Federal Government that...*
>
> *c. Services are to be obtained in the most cost effective manner, without barriers to full and open competition, and free of any potential conflicts of interest.*
>
> *e. Effective management practices are used to implement the guiding principles contained herein to prevent waste, fraud, and abuse in services contracting*

Section 7 – "*Good Management Practices*" states in part:

> *[S]ervices that tend to affect Government decision-making, support or influence policy development, or affect program management are more susceptible to abuse. These, therefore, require a greater level of scrutiny...*

b. Cost Effectiveness. When a valid requirement exists, agency officials must ensure that the requirement is obtained in the most cost effective manner. If contractor support is deemed appropriate, agencies should ensure that their acquisition strategy will result in the acquisition of services from a quality vendor that constitute the best value considering costs and other relevant factors, and yield the greatest benefit to the Government.

- In the absence of an effective screening process, neither the Department nor Ketchum identified indicators that the demographic makeup of the GWG audience was not consistent with the audience targeted by the Department. The television ad produced and aired under this program indicates it seeks to convey information to economically disadvantaged parents. The ad states in part:

  Parents in economically disadvantaged school districts can get information about how well their school is performing, about their teachers' qualifications, and about whether their school is safe.

  We found the proposal prepared by the GWG that was submitted to Ketchum includes the following information:

  Studies by Paul Kagan Associates, based on our affiliate shares and programming, reveal that Right Side Production's primary audience consists of sophisticated and affluent people who surround themselves with the finer things in life. Quality automotives, packaged goods, luxury travel and fine clothing and accessories are among the products that are advertised in this sophisticated program. Right Side Production's audience represents a market of uncompromising taste and spending power...

  Consumer Profile(s) of viewers from Right Side Production.

  Financial:
  40% more likely to have a full service brokerage account
  91% more likely to have securities valued over $100,000
  70% more likely to use an American Express Card

  Automotive:
  51% more like to purchase a new car with a sticker price over $40,000...

  Computers:
  98% more likely to do their banking online
  97% more likely to find financial information or do stock trading online.

SOW Requirements

Although Department officials have stated they were under the assumption they were only buying advertisements and airtime, we noted there were numerous indicators during the formation process that the GWG work under the work requests could include providing or attempting to arrange favorable NCLB commentary through various media outlets, which could

have been removed prior to the issuance of the work requests. This included language contained in the GWG proposal, the Ketchum proposal, and the SOW issued by the Department.

The undated GWG proposal stated in part:

> *Having contacts with people who influence local and national opinion will pay off by getting you at least balanced coverage of what could be a nasty defensive PR situation...*
>
> *GWG can help win the battle for media space by drawing upon our long-standing relationships with, The Russ Par radio show, Stevie Wonder's KJLH (CA), and Sinclair broadcasting (which owns 63 network affiliates) and America's Black Forum (which has been carried by network affiliates for over 25 years), to promote the [NCLB]. We will utilize that platform to further educate the public on the benefits of this important reform. These favorable commentaries will amount to passive endorsements from the media outlets that carry them – media outlets that speak most directly and potentially to the African American and broader community...*

Department and Ketchum representatives indicated to us that they were not aware of this at the time the work requests were in effect. Mr. Williams stated he had always been uncomfortable with the non-advertisement related items in the contract and had spoken to Ketchum representatives and the former Director of OPA about it before the contract was finalized. Department and Ketchum representatives did not recall any such conversations taking place. While we noted the costs associated with the proposal are only attributed to the production and airing of the television and radio advertisements, the additional language in the proposals and resulting SOW presents the appearance that other services were being paid for.

Information Provided to Decision Makers

Our review noted that a lack of information provided to Department officials may have resulted in the issuance of the second work request that otherwise may not have occurred had they been fully informed. Even if the concerns had been shared after the issuance, the Department still would have had an option to cancel the resulting work request if deemed necessary. The former General Counsel told us in retrospect that he wished he had shared the concerns noted in OGC's June 2, 2004 analysis with the former Secretary. He indicated that he felt the former Secretary valued his opinion, trusted him, and he was someone the former Secretary would normally vet things through. The Deputy General Counsel has also noted to us that he believed anyone making a decision on the issuance of this work request should have had the information available to them.

During the course of our review, we showed the former Secretary and former Chief of Staff (B) OGC's June 2, 2004 written legal analysis of the work request. Both became upset and indicated they had never seen nor heard of the concerns before, and that had they been informed of the contents of the communication it would have impacted the decision to move forward with the work request. The former Secretary stated there had been several occasions after concerns about the work requests arose in the media and prior to his departure in January 2005 where he had inquired about whether there were any issues with the GWG work requests. These meetings

were attended by the former General Counsel and Deputy General Counsel. Neither ever spoke of the concerns that had previously been noted in the analysis.

Ethical Considerations

We found no evidence that the Department entered into a contractual relationship with the GWG as the result of any personal relationships that had previously been developed with its CEO and President, Armstrong Williams. According to the former Secretary, they first met at an event in Washington DC in 2001, during the former Secretary's first year as Secretary of Education. Prior to the awarding of the first GWG work request, the former Secretary and Mr. Williams did meet on a few occasions at the Department, which appears to have been standard practice with regard to media personalities. The former Secretary characterized Mr. Williams as an acquaintance who had an aggressive personality. Mr. Williams characterized his relationship with the Secretary as cordial, friendly and respectful. He referred to himself as an "opportunist" that liked to have access to Cabinet members. He did not recall the Secretary ever initiating any contact with him, other than an invitation that came from the Secretary's office in January 2004 to attend a Kennedy Center concert, also attended by several other high-profile individuals. Mr. Williams and the former Secretary both mentioned their attendance at a professional football game back in December 2003. The former Secretary paid for his own seat to this game, and the invitation was actually extended to several minority Government officials by the son of the team's owner. The former Secretary stated he attended the game only in an effort to try to forge relationships with the National Football League regarding NCLB.

Several Department officials indicated they had never heard of or met Mr. Williams until just prior to or after the awarding of the work requests. Some stated they were aware of his name but had never met him. While two other Department officials did appear to have some previous contact with Mr. Williams, nothing came to our attention that would suggest any close relationships existed that would call into question the ethics of the resulting work requests.

Other Contributing Factors

- We noted several of the Department officials we interviewed and some documentation we reviewed indicated one of the reasons the Department may have entered into the arrangement with the GWG was to assist efforts in getting the former Secretary on a particular television talk show. Because one of the founding partners of the GWG had a close personal relationship with the talk show host, some Department officials felt this may give the Department access to the television program, as other attempts apparently had failed.

- The Department may also have entered into the arrangement simply because they had been looking for an opportunity to do more minority outreach, Mr. Williams came along and submitted a proposal for work with the Department, and the Department took advantage of an opportunity that presented itself that appeared to meet its needs, without determining whether it really was the best way to proceed.

Oversight of Work Completed Under the GWG Work Requests

The monitoring of work completed under the minority outreach campaign work requests did not ensure that performance was adequate or that the results desired by the Department were achieved. We found that monitoring activities generally did not did not conform to applicable FAR and OFPP guidance. As a result, the monitoring process did not protect the interests of the Department or identify problems with the execution of the work requests in a timely manner, and the Department paid for deliverables it never received.

FAR Subpart 1.602-2 states:

> *Contracting officers are responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the United States in its contractual relationships.*

Office of Federal Procurement Policy (OFPP) Policy Letter 93-1, *Management Oversight of Service Contracting*, Section 7 – "*Good Management Practices*" states:

> *c. Control. When contracting for services, in particular for highly specialized or technical services, agencies should ensure that a sufficient number of trained and experienced officials are available within the agency to manage and oversee the contract administration function. This especially applies to such services as management and professional support, studies, analyses, and evaluations, and engineering and technical support. Agency officials need to be able to make sound judgements on what the requirements should be, the estimated costs, and whether the contractor is performing according to the contract terms and conditions... Agency officials must also provide an enhanced degree of management controls and oversight when contracting for functions that closely support the performance of inherently Governmental functions.*

We found the Department could not always ensure compliance with contract terms due to weaknesses in the monitoring process. We identified several areas that showed inadequacies with respect to this process, specifically:

- Key Department officials were not familiar with SOW requirements. Staff that are unfamiliar with the provisions of the contract cannot be expected to effectively ensure contract terms are met.

- Department officials other than the Contracting Officer and COR had direct contact with the contractor and subcontractor regarding contract performance and agreements. This raised the potential for misunderstandings regarding contract terms and execution between all involved parties. We noted during our review that the subcontractor believed certain performance aspects had been resolved verbally, while the contractor and the Department officials had no recollection of discussing these matters or reaching agreements.

- There was no methodology in place to validate that the GWG aired ads as reported in activity reports. Neither the Department nor Ketchum had a process to spot check that any of the ads were run as claimed by the GWG. Representatives from both noted they were not spot checking the ads. Ketchum officials indicated they had asked the Department whether it wanted to pay for an independent third party to verify the airtime, which they indicated was standard practice and which the Department had apparently used on other projects, and they were told the Department did not have the funding to do so.

- There was no methodology to measure the effectiveness of the work performed by the GWG. There was no measurement system to determine if the ads were effective in meeting the goals and target audience of the minority outreach campaign. While the former Director of OPA indicated the NCLB website hits had increased during this time period, there was no way to measure whether it was the result of this or other outreach efforts. Although the impact of the first work request was not measured, the Department continued the campaign through the issuance of the second work request.

- The Department did not question, and in one instance assisted with, work completed outside of the period of performance. This included the production of radio and television ads featuring the former Secretary in advance of any contractual agreement with Ketchum, and the airing of ads in the periods before, between, and after effective agreements with Ketchum.

- The Department paid invoices provided by Ketchum although they did not clearly identify what the Department was receiving in return for payment (i.e. performance period, number of ads, production costs, or other elements). These invoices included single line items that identified the GWG subsidiary, Right Side Productions, as the payee, along with the date and amount.

- Neither the Department nor Ketchum was aware that Mr. Williams stopped airing his radio show in May 2004. Radio ads were included as a deliverable in the second work request issued in June 2004. Radio ads were never listed on activity reports for the second work request. Mr. Williams stated he notified Ketchum and the Department about this, but no officials of Ketchum or the Department recalled these conversations.

- The Department did not identify the 168 activities other than ads cited by Mr. Williams on his activity reports as promoting NCLB (including appearances on television programs other than his own, speeches, and published works) as a potential concern. Ketchum officials indicated these activity reports were passed along to the Department. Department officials, including the COR, have stated they do not recall seeing any of these reports until December 2004. Documentation obtained by OIG shows the Department did receive at least one of these reports prior to that. The report was sent by Ketchum to the COR in April 2004 in response to a Department request for information to assist with the determination of whether to move forward with a second work request. Another report noting Mr. Williams' appearances was sent to both the COR and Deputy Director of OPA in July 2004.

- The television ad produced under the first work request appears to consist of a public service announcement taped by the former Secretary for Mr. Williams in October 2003 by the Department. The Department appears to have subsequently paid for something it had already substantially produced itself.

- The radio advertisement that was produced appears to be the audio track from the television ad. Even though it was a required deliverable, the Department never received a recording of the radio ad until sometime in early 2005, at its own request.

- Ads identified as a deliverable for the second work request were never completed. Although the GWG was paid to produce new ads, the television ad from the first work request was repeated under the second work request.

- Full ad production costs were billed and paid by the Department, even though the Department only received two of the eight ads it was supposed to receive under both work requests.

- Mr. Williams has recently stated he never performed the activities related to the deliverable pertaining to America's Black Forum. He had never received approval to not perform this activity and no one at the Department seemed aware until recently that he had not performed this activity.

- There was no documentation to indicate activity reports were reviewed and evaluated to compare required versus actual performance.

According to the COR, the former Director of OPA was the contact person for the GWG work requests and involved in the day to day oversight of activities. As a result, the COR indicated she did not always have tangible proof to authorize payment, but relied on assurances from the former Director of OPA that everything was "going great". She added that she and the Contracting Specialist were often kept "out of the loop" regarding communications between Ketchum, the GWG and the Department. We noted an e-mail sent in October 2004 by the Contracting Specialist to Ketchum representatives regarding these communications concerns.

Contract monitoring weaknesses increase the risk of irregularities and inefficiencies in contract performance. Inadequate documentation of contract monitoring and review and acceptance of deliverables impairs the Department's ability to hold the contractor accountable for performance. Failure to enforce contract terms may also constitute a waiver of the Department's rights to enforce contract terms, may support interpretations of contract requirements contrary to the Government's best interest, and/or may subsequently weaken the Government's position to effectively defend itself in contract disputes.

In a letter issued to Ketchum by the Department's Contracting Officer on March 4, 2005, the Department requested additional information about how many deliverables were actually produced under the work requests, which work request the deliverables that had been received were produced under, whether the required ads had actually been produced, and whether Ketchum was aware of any oral or written modifications to the work requests that would have

excused it from producing the required deliverables—information the Department should already have known had it been effectively monitoring work performed under the work requests.

The Department has paid $188,500 to date under the two work requests with the GWG, a portion of which was for ads that were never produced, as well as ads that were of poor quality, airtime for which it has no assurance was actually utilized, and a target audience that was most likely never reached.

CONCLUSION

While the Department did not explicitly violate any significant laws or regulations relevant to the formation of the Ketchum contract or GWG work requests, they did make a series of bad management decisions, including the failure to share critical information with decision makers, and exercised poor judgment and oversight. As a result, the Department paid for work that most likely did not reach its intended audience and paid for deliverables that were never received. The ads that were received appear to be of poor quality, and the Department has no assurance the ads received the airtime for which it paid. The documentation we reviewed appears to indicate payment was attributed solely to the production of ads and airtime. However, because other activities relating to commentary were included in the SOWs and activity reports, and because the invoices received and paid by the Department were vague, the appearance is that the Department may have been paying for more than just the advertising.

RECOMMENDATIONS

We recommend that the Secretary of Education take action to ensure:

1. CAM and Program Office staffs are familiar with the terms and conditions of the contracts they are responsible for managing and that contract terms are enforced.

2. CORs track and keep COs fully informed of the status of all deliverables.

3. COR recommendations for invoice payment are supported by adequate documentation of acceptable performance.

4. CORs are provided sufficient resources to fulfill their responsibility for overall contract monitoring, and that other involved staff provide the COR with appropriate input as needed. Specifically, for each contract, a contract monitoring plan should be developed by which:

    a. the COR ensures deliverables are tracked, inspected in accordance with contract requirements, and formally accepted or rejected;
    b. the CO and COR are involved in all key discussions with the contractor regarding contract performance, proposed changes to the scope of work, and provide appropriate authorization for any such changes,

5. The CO, COR, and other Program Office staff involved in contract management, meet to review the contract monitoring plan, and agree upon the methodology for monitoring the applicable contract. During the meeting, the CO should review the requirements in the FAR, the Department's Directive for contract monitoring, and the terms of the contract, including deliverable requirements, to ensure that all parties understand their responsibilities for contract monitoring.

6. Appropriate FAR citations and clauses are incorporated into Department contracts, to include clauses requiring competition in subcontracting, to ensure the best value and best approach are achieved.

7. Performance-based contracting is utilized to the extent possible, to ensure mechanisms are in place to effectively measure contract performance.

8. Funds are recovered under the GWG work requests, if appropriate, for deliverables that were paid for but never received.

SCOPE & METHODOLOGY

This inspection was performed in accordance with the President's Council on Integrity and Efficiency (PCIE) Quality Standards for Inspections (2005). The inspection was conducted during the period January 18, 2005 through April 4, 2005.

To complete our work we conducted interviews with current and former employees of the Department, Ketchum, and the GWG. We reviewed related documentation maintained by the Department's CAM, OPA, OS and OGC relating to the Ketchum and GWG awards. This included contract documents, proposals, SOWs, invoices, and activity reports. We also reviewed available e-mails and correspondence regarding the Ketchum and GWG awards.

We reviewed applicable sections of the FAR; OFPP Policy Letter 93-1, *Management Oversight of Service Contracting*; the Competition in Contracting Act of 1984; and related Department policies and procedures.

THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

April 15, 2005

Honorable John P. Higgins, Jr.
Inspector General
Department of Education
Washington, DC 20202

Dear Mr. Higgins:

I have reviewed the Inspector General's report, *Review of Formation Issues Regarding the Department of Education's Fiscal Year 2003 Contract with Ketchum, Inc. for Media Relations Services.* I would like to thank you and your investigative and audit teams for your diligence in compiling this careful and thorough report, especially under an expedited process. I accept the report as drafted and embrace the recommendations. On behalf of the Department, I am not asserting privilege with respect to the contents of the report. Although this contract was initiated and executed prior to my arrival at the Department of Education, I welcome the release of this report and its findings because it is my strong desire to understand how this happened to ensure it is not repeated.

It is clear from this report that there were serious lapses in judgment by senior Department officials in regard to this contract that reverberated down the chain of command: (1) a lack of communication; (2) inadequate information-sharing within the Department, between the Department and its prime contractor, and between the prime contractor and its subcontractor; and (3) a critical lack of oversight that ultimately showed a lack of regard for how taxpayer dollars were ultimately used. Proper management of Departmental resources is imperative to fulfill the Department's mission. Top decision-makers should be well informed and must ensure all contracts are well managed and that we get what we pay for. In short, what happened here was wrong.

Though this report paints a very unfortunate picture of mismanagement and indicates a lack of sound judgment on several levels, it sheds light on problems at the Department in several aspects of contract management that I have already set out to fix. In addition, I will implement all of the Inspector General's recommendations described below as well as other measures I am initiating that go further.

There is also the larger issue of the "why" and "how" this incident happened. In an effort to answer these questions, the report includes a narrative and timeline dating back as early as March 2003 that focuses upon the Department's internal conversations, deliberations, and final decisions that led to the writing of the original task order with Ketchum, and the use of the Graham Williams Group's (Armstrong Williams') services.

My personal observation is the Office of the Secretary carries weight. When the Secretary, his/her chief of staff and other senior officers urge, hint, suggest or recommend anything, it can start a chain reaction within the building to carry out that request, such as what occurred beginning in March 2003. As a result, it is the Secretary who must be careful about and is ultimately responsible for the signals that his/her office sends.

I care very deeply about the credibility of this Department and am working hard to enhance public trust in this agency. We are currently pursuing potential monetary remedies from the service provider under the contract. In addition, the senior appointees who were responsible for this contract no longer work at the Department. It was a problem that originated at the Department and ultimately is a problem that will continue to be fixed here.

For this reason, and in anticipation of the findings of other active OIG investigations, I have taken or will take the following actions in addition to those recommended by the Inspector General, to ensure that any future public relations or other contracts are executed and implemented according to the highest standards:

- directed each Principal Officer leading a program office to take immediate steps and personal responsibility for ensuring that all discretionary grants and procurement contracts are awarded in accordance with all applicable federal statutes, regulations and standards and that discretionary grants and contracts are fully and effectively monitored to ensure timely and acceptable delivery of all required results;

- initiated a review by the Office of General Counsel of all current contracts that contain a public relations function;

- designated a Senior Advisor reporting directly to me who will oversee the transformation of critical processes at the Department to ensure enterprise-wide effective investing and risk management of the Department's grants, loans, contracts and related services;

- announced a new position of an Assistant Secretary for Communications and Outreach to assume the role and functions of the former Director of Communications and consolidate and better coordinate the communication functions of the Department to ensure clear, consistent communications across the Principal Offices; this position will be subject to Senate confirmation; and

- direct the Chief Acquisition Officer and Contracts and Acquisitions Management (CAM) Director to develop a training program which will reinforce the Department's contracting processes, laws and regulations, and which senior managers, contracting personnel, and relevant program office personnel will be required to attend.

While the OIG Inspection Report found that the Department did not violate any laws or regulations involving the formation of the Ketchum contract or task orders, the OIG has recommended that the Department take necessary steps to address weaknesses found in contract monitoring, oversight, and administration. The following information sets forth the OIG

recommendations, my responses, and my actions to address each recommendation. For these specific recommendations, I shall begin implementation of my action steps the week of April 18, 2005; a timeline for completion of the action steps will be forthcoming. I will insist upon the full cooperation of senior managers, contracting personnel, and program office personnel.

1. **The Secretary of Education (Secretary) shall take action to ensure that CAM and Program Office staffs are familiar with the terms and conditions of the contracts they are responsible for managing and that the contract terms are enforced.**

Response: The Secretary concurs. The Department has previously established policies on contract monitoring that address the responsibilities of the contracting officers, contract specialists, program managers and the contracting officer's representatives (COR). These Department officials are responsible for complete familiarity with contract terms and conditions. Senior managers shall be held accountable for the following actions:

Actions

I shall direct all Department contracting staff, principal officers and program managers and CORs to read, adhere to, and become thoroughly familiar with the requirements of the ACS Directive OCFO:2-108, Contract Monitoring for Program Officials (hereinafter "ACS Directive"), drawing specific attention to Section VI, "*Responsibilities,*" Section VII(A) *"The Importance of an Effective COR/CO Relationship"* (emphasizes the importance of a cooperative relationship to ensure integrity is not compromised), and Section VII(F), *"Preparing for Contract Monitoring."*

In addition, I shall direct the Chief Acquisition Officer and Contracts and Acquisitions Management (CAM) Director to establish procedures for any modifications or changes to contracts to be clearly and timely communicated by CORs to program managers and senior officers. The purpose of this action is to ensure that all interested parties have a thorough and contemporary understanding of the terms of any contract. Moreover, such procedures shall instruct interested parties that discussions concerning contract terms or changes to the terms must be made with the knowledge of the contracting officer and the COR in order to effect any change to a contract's terms.

2. **The Secretary shall take action to ensure that CORs track and keep COs fully informed of the status of all deliverables.**

Response: The Secretary concurs. As stated above, the Department has established policies on contract monitoring. Senior managers shall be held accountable for the following actions:

Actions

With respect to the responsibilities and duties of contracting officers (COs) and CORs, I shall direct the Chief Acquisition Officer and CAM Director to include, among other things, specific guidance in contract monitoring plans about COR responsibilities for tracking deliverables,

reporting on contractors' progress, and determining the status of deliverables on a regular basis, all of which must comport with the ACS Directive in Section VII, N. (See also response 4 below.)

3. **The Secretary shall take action to ensure that COR recommendations for invoice payment are supported by adequate documentation of acceptable performance.**

Response: The Secretary concurs. Senior managers shall be held accountable for the following actions:

Actions

I shall direct the Chief Acquisition Officer and the CAM Director to reintroduce and reinforce to contracting officers (COs) and CORs the provisions of the ACS Directive that address the quality and acceptability of deliverables, and review of payment requests per Section VII, N of the ACS Directive. The CAM Director shall ensure that this policy is specifically addressed in contract monitoring plans (see response 4 below).

4. **The Secretary shall take action to ensure that CORs are provided sufficient resources to fulfill their responsibility for overall contract monitoring, and that other involved staff provide the COR with appropriate input as needed. Specifically, for each contract, a contract monitoring plan should be developed by which:**

   a. the COR ensures deliverables are tracked, inspected in accordance with contract requirements, and formally accepted or rejected;

   b. the CO and COR are involved in all key discussions with the contractor regarding contract performance, proposed changes to the scope of work, and provide appropriate authorization for any such changes.

Response: The Secretary concurs. I acknowledge communication failures, reflected in this report, between CORs and program office personnel. For example, the report states that the COR believed that she and the contract specialist were both kept "out of the loop" and that it appears that the COR had to rely on minimal information regarding contract performance. Senior managers shall be held accountable for the following actions:

Actions

a. As stated in response 7 below, I support the use of performance based contracting that includes the development of quality assurance surveillance plans (QASPs). The QASP is used to perform government surveillance and evaluation of contractor performance. In addition to QASPs, I shall direct the Chief Acquisition Officer and CAM Director to develop procedures for ensuring that contract monitoring plans include, but are not limited to, the process for tracking, inspecting, and accepting or rejecting deliverables. The Chief Acquisition Officer and CAM Director shall ensure that a copy of the contract monitoring plan is included in the contract

record, and shall establish procedures that encourage the acquisition team to meet regularly to review the monitoring plan and implementation.

b. I shall direct the Chief Acquisition Officer and CAM Director to include instructions, in the contract monitoring plan, which require the contracting officer or contract specialist, and the COR to be present at discussions with the contractor. Additionally, and as described in response 1 above, procedures shall be established by the Chief Acquisition Officer and the CAM Director for any modifications or changes to contracts to be clearly and timely communicated by CORs to program managers and senior officers, to ensure that all interested parties have a thorough and contemporary understanding of the terms of the contract.

5. **The Secretary shall take action to ensure that the CO, COR, and other Program Office staff involved in contract management, meet to review the contract monitoring plan, and agree upon the methodology for monitoring the applicable contract. During the meeting, the CO should review the requirements in the FAR, the Department's Directive for contract monitoring, and the terms of the contract, including deliverable requirements, to ensure that all parties understand their responsibilities for contract monitoring.**

Response: The Secretary concurs. Senior managers shall be accountable for the following actions:

Actions

I shall direct the Chief Acquisition Officer and the CAM Director to reinforce the practice of conducting a post-award acquisition team orientation to go over the contract terms and conditions, technical performance requirements, and monitoring plans, and remind all COs, CORs, and program office personnel involved in contract management of their duties and responsibilities.

6. **The Secretary shall take action to ensure that appropriate FAR citations and clauses are incorporated into Department contracts, to include clauses requiring competition in subcontracting, to ensure the best value and best approach are achieved.**

Response: The Secretary concurs. Senior managers shall be accountable for the following actions:

Actions

I shall direct the Chief Acquisition Officer and the CAM Director to ensure that all FAR and Department-specific contract clauses are current and that all contracts include all pertinent clauses necessary to effect contract compliance. I shall also direct the Chief Acquisition Officer and the CAM Director to ensure that all contracting personnel read, adhere to, and become thoroughly familiar with the procedures and applicability of FAR 44.2 relating to encouraging competition in subcontracting.

7. **The Secretary shall take action to ensure that performance-based contracting is utilized to the extent possible, to ensure mechanisms are in place to effectively measure contract performance.**

Response: The Secretary concurs. Senior managers shall be accountable for the following actions:

Actions

I endorse performance-based contracting and will require that senior managers ensure contractor payments are clearly tied to stated outcomes, and meet the standards in the contract. To this end, I shall direct the Chief Acquisition Officer and the CAM Director to reemphasize to all contracting personnel and program office personnel the Department's continued commitment to use performance-based contracting. The Chief Acquisition Officer and the CAM Director shall reiterate that performance-based contracting requirements include clear performance objectives and measurable performance standards.

8. **The Secretary shall take action to ensure that funds are recovered under the GWG work requests, if appropriate, for deliverables that were paid for but never received.**

Response: The Secretary concurs. Senior managers shall be responsible for the following actions:

Actions

I shall instruct the CAM Director to pursue all available remedies under the contract including, but not limited to, the recovery of payments. To this end, the CAM Director shall work with the Office of Inspector General, the Office of General Counsel and appropriate program office personnel to determine the best course of action.

While committed to the plan I have described above, I intend to stay focused on education while also heeding the lessons contained in this report and ensuring that taxpayer dollars are used effectively and judiciously. We have much work to do to ensure that all children in this great nation – regardless of their race, economic circumstance or location – get the quality education they so deserve. We will continue to communicate with parents, teachers, administrators and other stakeholders in the educational system to help guide them as to ways we can all work together to meet the mission: improving children's lives through learning.

Sincerely,

Margaret Spellings