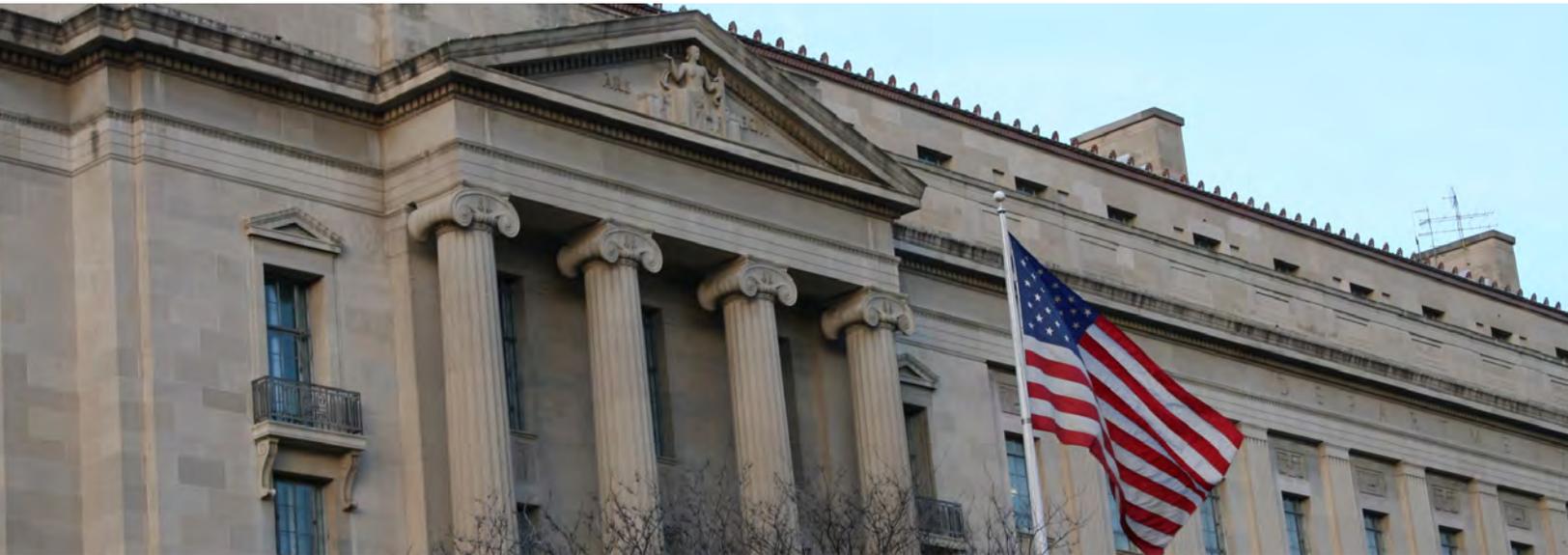




Office of the Inspector General
U.S. Department of Justice

OVERSIGHT ★ INTEGRITY ★ GUIDANCE



Audit of the Drug Enforcement
Administration's Regional Linguist
Services Contract Awarded to
Conduit Language Specialists, Inc.



Executive Summary*

Audit of the Drug Enforcement Administration's Regional Linguist Services Contract Awarded to Conduit Language Specialists, Inc.

Objective

In October 2012, the Drug Enforcement Administration (DEA) awarded two contracts to Conduit Language Specialists, Inc. (Conduit), one of which was for analytic linguist services for the DEA's Denver and Phoenix Field Divisions. The Department of Justice Office of the Inspector General (OIG) conducted an audit of this contract to assess the DEA's administration of and **Conduit's** performance in compliance with the contract terms and conditions in the areas of: (1) contractor performance; (2) billings and payment; and (3) contract management, oversight, and monitoring.

Results in Brief

We concluded the DEA failed to provide sufficient administration and oversight of the contract, which resulted in: (1) significant non-compliance with applicable laws, regulations, and the contract terms and conditions; (2) minimal quality assurance (QA); (3) contractor performance deficiencies; and (4) poorly defined contract requirements. We determined that some linguists worked under the contract without valid language proficiency results, completed background investigations, or signed non-disclosure forms. As a result, the DEA paid almost \$2.9 million in net unallowable costs for linguist services. After we asked the DEA about this non-compliance, the DEA issued blanket waivers for linguists, but the waivers included no justification and only waived a portion of the language proficiency requirement. The OIG issued a Management Advisory Memorandum (MAM) to the DEA regarding these issues in February 2017. **However, the DEA's response did not adequately address our concerns.**

The problems we identified may impact **the DEA's ability** to meet its mission to enforce the laws and regulations governing controlled substances and to bring to justice individuals and organizations involved in the growing, manufacture, or distribution of controlled substances.

Recommendations

Our report contains 11 recommendations to assist the DEA in improving contract administration and oversight of its linguist contracts.

Audit Results

Our audit focused on contract number DJD-13-C-0004, which is a time and materials contract that includes a 1-year base period with four 1-year option periods and a contract ceiling of over \$135 million. Actual contract costs paid through December 2017 were approximately \$39 million. The contract is scheduled to end in April 2018.

Linguist Requirements - We determined that some linguists worked under the contract without valid language proficiency results, completed background investigations, or signed non-disclosure forms. After we asked the DEA about this non-compliance, the DEA issued blanket waivers for linguists, but the waivers included no justification and only waived a portion of the language proficiency requirement. We reviewed documentation for 35 out of 490 linguists and determined that 29 did not have valid language proficiency results, 4 did not have completed background investigations or waivers, and 13 did not have signed non-disclosure agreements prior to starting work on the contract. We found that the DEA paid almost \$2.9 million for linguists who did not meet these essential prerequisites.

In response to our MAM, the DEA stated that obtaining the language proficiency test results was an administrative detail; explained it would provide additional guidance to both the DEA and Conduit; and indicated it would take no action related to our questioned costs. By not addressing these failures or preventing these problems from reoccurring, the DEA risks affecting its investigations and, therefore, its ability to properly carry out its important mission.

Delegation of Duties - The DEA appointed only 1 Contracting **Officer's Representative (COR)** and 22 Task Monitors (TMs) to oversee 8 regional linguist contracts, including contract number DJD-13-C-0004. The COR was not directly performing the majority of the responsibilities identified in the COR delegation letter. Instead, many of these responsibilities were completed by other individuals that had not received COR-specific training. This increases the risk that required duties will

* Redactions were made to this report to enable it to be issued publicly. The redactions are of company proprietary information in the body of the **report and the auditee's response, and of individuals' names and email addresses in the auditee's response. The redactions were made to protect proprietary information and individual privacy, respectively.**



Executive Summary

Audit of the Drug Enforcement Administration's Regional Linguist Services Contract Awarded to Conduit Language Specialists, Inc.

not be sufficiently completed and that problems will go unaddressed because a central person is not monitoring the tasks.

Further, we found that the TMs did not receive or review required language proficiency testing results for any of the linguists prior to a linguist working under the contract, as required. The TMs also did not consistently ensure that the required surveys and reports were completed as part of their contract administration and contractor performance assessment responsibilities.

Contract Reports and Deliverables - DEA did not provide any documentation to support that it completed annual contractor performance assessment reports in accordance with the Federal Acquisition Regulation (FAR), which are crucial to effective contract administration and oversight. Additionally, Conduit's monthly administrative reports were missing key information, including expenditures and hours per linguist by task order, the total number of hours worked per month for each language, and a description of the work performed during the reporting period for each task order. The DEA did not identify these deficiencies despite the importance of this information for monitoring contractor performance.

Quality Assurance - Despite the DEA's responsibility for QA, the DEA placed sole responsibility for QA on Conduit. Although required by the contract, Conduit officials acknowledged that they had not followed or enforced Conduit's QA plan to ensure adequate QA throughout all areas of contract performance. The DEA also did not properly review the plan on a regular basis to ensure compliance by Conduit. Although the DEA's QA deficiencies affect the assurance that it is receiving accurate and valid linguist work, the DEA failed to address this issue in its response to our MAM.

Contractor Performance - The DEA's significant failures related to linguist requirements, contract administration and oversight, and QA contributed to the contract performance deficiencies we identified. We found that Conduit on occasion replaced linguists classified as independent contractors with linguists classified as employees without first consulting with DEA TMs or DEA Special Agents. Conduit officials told us that its staffing of linguists is based on multiple factors.

However, replacing linguists may risk disrupting and impacting ongoing investigations.

We determined that Conduit was unable, on three different occasions, to fully meet the DEA's requirement for two languages, Arabic and Bosnian. To fill this unmet need, the DEA paid \$33,421 more to another linguist contractor than it would have paid under its contract with Conduit. The DEA also had to use linguists from the Federal Bureau of Investigation to satisfy its needs when neither Conduit, nor any other linguist contractor, could provide the requested linguists.

Compliance with Labor Regulations - We identified deficiencies with how Conduit paid fringe benefits to some of its linguists as required by the Service Contract Labor Standards (SCLS), as well as deficiencies with how Conduit calculated its fixed billing rate, which was used to bill the DEA for linguists' hours. Additionally, we determined that the DEA improperly approved and paid price adjustments to Conduit that included unallowable increases to profit and general and administrative costs. The DEA does not provide any guidance or training to its personnel on how to review contract price adjustments, and DOJ does not have guidance to assist components in complying with the SCLS. In other recent OIG audit reports, we also identified SCLS compliance problems related to other DOJ service contracts.

Definition of Contract Requirements - The lack of well-defined contract requirements can lead to problems with contract administration and oversight, result in contractor performance problems, and increase the risk that the government will receive lesser quality services that do not meet government needs. We found that the DEA did not adequately define its need for this contract, which ultimately hindered Conduit's ability to keep linguists actively working in certain locations. In response to our MAM, the DEA acknowledged that there are challenges related to the pricing of this contract. However, the DEA has not provided procedures or its methodology to develop the contract requirements for the upcoming solicitation.

AUDIT OF THE DRUG ENFORCEMENT ADMINISTRATION'S
REGIONAL LINGUIST SERVICES CONTRACT
AWARDED TO CONDUIT LANGUAGE SPECIALISTS, INC.

TABLE OF CONTENTS

| | |
|---|----|
| INTRODUCTION | 1 |
| Conduit Language Specialists, Inc. | 2 |
| OIG Audit Approach | 3 |
| Management Advisory Memorandum | 3 |
| Prior OIG Reports..... | 4 |
| AUDIT RESULTS..... | 6 |
| Linguist Requirements | 6 |
| Language Proficiency..... | 6 |
| Security Requirements for Linguists | 10 |
| Compliance with HSPD-12..... | 14 |
| Contract Administration and Oversight | 16 |
| DEA Contract Administration Plan | 16 |
| Delegation of Duties..... | 17 |
| Contract Reports and Deliverables | 22 |
| Contract Quality Assurance | 25 |
| Quality Assurance Surveillance Plan | 25 |
| Conduit's Quality Assurance Plan | 27 |
| Contractor Performance..... | 30 |
| Contract Requirements | 31 |
| Conduit's Scheduling of Linguists | 33 |
| Service Contract Requirements and Contractor Payments | 34 |

| | |
|---|-----|
| Compliance with Service Contract Labor Standards and Wage Determinations..... | 35 |
| Conduit’s Billing Rates | 38 |
| Contract Price Adjustments | 41 |
| Guidance for the Administration of Service Contracts | 46 |
| Definition of Contract Requirements | 47 |
| CONCLUSION AND RECOMMENDATIONS..... | 52 |
| STATEMENT ON INTERNAL CONTROLS..... | 58 |
| STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS..... | 59 |
| APPENDIX 1: OBJECTIVE, SCOPE, AND METHODOLOGY | 60 |
| APPENDIX 2: SCHEDULE OF DOLLAR-RELATED FINDINGS | 63 |
| APPENDIX 3: OIG MANAGEMENT ADVISORY MEMORANDUM TO THE DEA ON OVERSIGHT OF CONTRACTS FOR ANALYTIC LINGUIST SERVICES..... | 64 |
| APPENDIX 4: THE DEA’S RESPONSE TO THE OIG’S MANAGEMENT ADVISORY MEMORANDUM | 69 |
| APPENDIX 5: THE DRUG ENFORCEMENT ADMINISTRATION’S RESPONSE TO THE DRAFT AUDIT REPORT | 74 |
| APPENDIX 6: CONDUIT LANGUAGE SPECIALISTS, INC. RESPONSE TO THE DRAFT AUDIT REPORT | 82 |
| APPENDIX 7: CONDUIT LANGUAGE SPECIALISTS, INC. LETTER TO THE DEPARTMENT OF JUSTICE INSPECTOR GENERAL | 104 |
| APPENDIX 8: CONDUIT LANGUAGE SPECIALISTS, INC. NOVEMBER 2017 RESPONSE TO THE DRAFT AUDIT REPORT | 106 |
| APPENDIX 9: OFFICE OF THE INSPECTOR GENERAL ANALYSIS AND SUMMARY OF ACTIONS NECESSARY TO CLOSE THE REPORT..... | 109 |

AUDIT OF THE DRUG ENFORCEMENT ADMINISTRATION'S
REGIONAL LINGUIST SERVICES CONTRACT
AWARDED TO CONDUIT LANGUAGE SPECIALISTS, INC.

INTRODUCTION

The mission of the Department of Justice (DOJ) Drug Enforcement Administration (DEA) is to enforce the laws and regulations governing controlled substances and to bring to the criminal and civil justice system those individuals and organizations involved in the growing, manufacture, or distribution of controlled substances appearing in or destined for illicit traffic in the United States. Much of **the DEA's success is increasingly dependent on the rapid and** thorough understanding of languages other than English. The DEA requires highly-skilled analytic linguists (linguists) to perform language-related services, including analysis, monitoring, transcription, translation, interpretation, and validation for DEA Title III wires.¹ The DEA has used indefinite delivery/indefinite quantity (ID/IQ) contracts and blanket purchase agreements for linguist services nationwide since 1995.²

In 2012, the DEA awarded eight regional ID/IQ contracts to four vendors for linguist services in support of its Title III Wiretap Program, each with a base year and four option periods. The **8 contracts were divided among DEA's 21** Field Divisions. The total contract ceiling for all eight regional linguist contracts was approximately \$1.8 billion. However, as of December 2017, the DEA had only obligated approximately \$350 million total for the eight contracts. The majority of the contracts were scheduled to end in October 2017; however, the DEA extended the contracts until April 2018.³ As such, the DEA has begun preparing for the follow-on regional linguist contracts to replace the existing contracts.

The DEA Office of Acquisition and Relocation Management, located in Arlington, Virginia, is responsible for contract administration. The Contracting Officer identified in the contract with overall responsibility for the contract was located in the Office of Acquisition and Relocation Management. Contracting Officers in SOD issued the task orders under the contract. For the contract, the DEA **designated one Contracting Officer's Representative (COR)**, located in the DEA Special Operations Division (SOD), with responsibility for performing contract administration for all eight regional linguist contracts. The DEA also designated one

¹ The federal electronic surveillance statutes (commonly referred to collectively as Title III) are codified at 18 U.S.C. § 2510 and in Pub. L. No. 90-351 (1968). These statutes cover wire, oral, and electronic interception orders.

² An ID/IQ contract is used to acquire supplies and/or services when the exact times and/or quantities of future deliveries are not known at the time of contract award. A blanket purchase agreement is a simplified method of filling anticipated repetitive needs for supplies or services by establishing charge accounts with qualified sources.

³ One of the eight contracts is scheduled to end in November 2018.

Task Monitor (TM) per field division who were delegated responsibilities to assist the COR with contract administration and communicate with the contractor on technical matters within the scope of the contract.

Conduit Language Specialists, Inc. (Conduit) received two of the eight regional linguist contracts, contract numbers DJD-13-C-0003 and DJD-13-C-0004. The DOJ Office of the Inspector General (OIG) audited the DEA time and materials contract number DJD-13-C-0004, awarded to Conduit on October 31, 2012, for linguist services for the mountain region (the contract).⁴ DEA awarded the contract with a contract ceiling of approximately \$133 million, which the DEA subsequently raised to over \$135 million. As of December 2017, the DEA had obligated approximately \$39 million for the contract. The DEA exercised the final option year in August 2016 and later extended the contract until April 2018.

Linguists were required to perform a variety of tasks under the contract, such as:

- Analysis: methodically examine intercepted information to decipher codes, determine relationships, identify organizational hierarchies and associations, and establish patterns;
- Monitoring: listen or read foreign language communications and perform immediate verbal summaries, and subsequently write or type summaries in English;
- Transcription: render spoken word of a language into the written form of the same language;
- Translation: render spoken or written word of a language into the written form of another language; and
- Interpretation: translate orally, either consecutively or simultaneously, from one language to another.

Additionally, Conduit was required to maintain a minimum number of linguists for four required languages. The languages included Spanish, German, Vietnamese, and Chinese (Cantonese) for the Denver Field Division and Spanish for the Phoenix Field Division. The contract also identified a list of 114 common or exotic languages for which Conduit was required to provide linguist services on an as needed basis. This list was not all inclusive and the DEA could require other languages not listed.

Conduit Language Specialists, Inc.

Conduit is headquartered in Paris, Kentucky and was founded in 1999. Conduit has contracted with the DEA for linguist services since 2005. Conduit, with

⁴ The mountain region covers **DEA's Denver and Phoenix** Field Divisions. Contract DJD-13-C-0003 is for the northwest region, which covers **DEA's Seattle and San Francisco** Field Divisions.

a network of more than 4,000 language professionals, provides interpreting, translation, and transcription services covering 250 languages and dialects. **Conduit's customers include federal agencies and** state and local law enforcement entities.

OIG Audit Approach

The objective of this audit was to assess **the DEA's administration of and Conduit's performance in compliance with the contract terms and conditions in the** areas of: (1) contractor performance; (2) billings and payments; and (3) contract management, oversight, and monitoring.

To assess Conduit's performance on the contract, we interviewed DEA personnel at the field divisions **regarding Conduit's** achievement of the contract requirements. We surveyed DEA Special Agents (Case Agents) from **DEA's Denver** and Phoenix Field Divisions who worked with linguists under the contract on their cases to determine whether issues with linguist performance occurred and were resolved. We also interviewed Conduit linguists and supervisory personnel at each division to gain an understanding of the work that linguists complete under the contract.

To evaluate compliance with contract requirements regarding billing and **payments, we reviewed the accuracy of Conduit's invoices for task orders issued under the contract and examined Conduit's compliance with *Service Contract Labor Standards* (SCLS)** and regulations addressing price adjustments for service contracts.

To assess compliance with contract management, oversight, and monitoring, we examined the **DEA's Contract Administration Plan** to determine how the DEA **administered the contract. We also reviewed Conduit's Quality Assurance Plan** to determine how Conduit monitored the quality of linguist services and ensured that contract requirements were met. We reviewed contract deliverables to determine whether Conduit submitted them in accordance with the contract terms and conditions.

Management Advisory Memorandum

On February 28, 2017, we issued a Management Advisory Memorandum (MAM) to the DEA highlighting concerns we identified during our audit related to the language proficiency and security requirements **of linguists, the DEA's and Conduit's quality assurance practices, and the DEA's ability to adequately define its contract need.** We deemed these concerns **significant enough to warrant the DEA's** immediate attention and consideration in its planning for the follow-on regional linguist contracts.

The DEA provided a response to our MAM and we incorporated the corrective actions taken by the DEA that address our concerns throughout this report. The DEA also noted that the actions taken to address our concerns will be implemented

for all eight DEA regional linguist contracts and for the upcoming solicitation for the follow-on regional linguist contract awards. See Appendix 3 for a copy of the MAM and Appendix 4 **for a copy of the DEA's** Response to the MAM.

Prior OIG Reports

In December **2010**, the OIG issued an audit report on the DEA's language services contract with a different contractor, contract number DJDEA-08-C-0047, to support the DEA El Paso Field Division. The report concluded that the Contracting **Officer's Technical Representative** (COTR) was not effectively monitoring contractor compliance with contract requirements, and the Contracting Officer was not **effectively overseeing the COTR's** performance of the contract administration duties.⁵ The OIG found that linguists did not have the proper language proficiency testing documentation or documentation to support successful background investigations, as required by the contract.

In February **2012**, the OIG issued an audit report on the DEA's language services contract with SOS International, Ltd (SOSI), contract number DJDEA-05-C-0020, to support the DEA Dallas Field Division.⁶ The report concluded that the COTR did not effectively monitor the contract to ensure compliance with contract requirements or completion of contractor performance assessment reports, the COTR did not complete the required continuous training, and the Contracting Officer **needed to improve monitoring of the COTR's performance of the delegated** contract administration responsibilities.

Specifically, the OIG found that linguists worked under the contract without DEA approval for access to DEA Sensitive information, the approval forms were missing signatures or other information, and updates to marital status were not **reported, violating the contract terms and DEA's own security procedures** documented in DEA 2852.204.84. The OIG also found that SOSI was not submitting Monthly Administrative Reports in accordance with the contract and linguists continued to conduct translations after their certifications had expired under the 5-year time limit established by the contract. The OIG found that SOSI failed to fully comply with the requirements in its Quality Control Plan, including regular meetings between SOSI and the COTR and worksite inspections, and the COTR was unaware of the SOSI Quality Control Plan since it was not contained in the contract file.

⁵ As of September **2011**, the Office of Federal Procurement Policy's requirements for the Federal Acquisition Certification for COTRs was replaced by the Federal Acquisition Certification for CORs; the term COTR was changed to COR to align with the Federal Acquisition Regulation, which incorporated a definition for a COR and included the designation of a COR as part of a Contracting **Officer's responsibilities**.

⁶ For information related to the December 2010 and February 2012 reports see U.S. Department of Justice Office of the Inspector General, *Audit of the Drug Enforcement Administration's Language Services Contract with SOS International, Ltd. Contract Number DJDEA-05-C-0020 Dallas Field Division*, Audit Report GR-60-12-004 (February 2012).

As a result of these findings, the OIG made 10 recommendations to the DEA and questioned costs totaling \$934,144 due to the lack of language proficiency certifications and \$45,000 related to **SOSI's failure to perform on-site inspections**. For example, the OIG made recommendations in the following areas:

- Implementing procedures to ensure the Contracting Officer fully monitors the activities of the COTR, contract administration, and contract performance;
- Implementing procedures to ensure requirements for periodic background reinvestigation are tracked and accomplished timely, and approvals for access to DEA sensitive information are completed and current, and the files are maintained;
- Implementing procedures to ensure linguists have been properly certified, that certification are kept current, and only certified linguists work under the contract;
- Ensuring **that for future contracts, the contractor's Quality Control Plan** is included in the contract file and disseminated to appropriate personnel, that the contract and Quality Control Plan requirements are reviewed and updated periodically to eliminate, add or modify contents, and that modifications to the contract and contractor Quality Control Plan are properly authorized and approved;
- Implementing procedures to ensure Monthly Administrative Reports and Contractor Performance Reports are completed, submitted timely, and maintained in the contract file;
- Implementing procedures to ensure meetings between the contractor and the DEA are regularly held, documented, and included in the contract file; and
- Evaluating the time required for the COTR to fulfill their requirements and ensure enough time is allocated to accomplish all responsibilities.

The DEA concurred with all recommendations in this report. However, we believe the corrective actions taken by the DEA have not fully addressed these deficiencies or prevented them from reoccurring. As detailed in the Audit Results section of this report, we found many of the same problems in this audit, such as with linguist security background investigations, language proficiency, contract administration and oversight, and quality assurance.

AUDIT RESULTS

We identified numerous **weaknesses in the DEA's contract administration and oversight** of contract number DJD-13-C-0004 and determined that both the DEA and Conduit failed to provide sufficient quality assurance over the contract. As a result, this condition affects the assurance that the DEA received accurate and valid linguist work. Of particular concern, the DEA paid nearly \$2.9 million for linguists who did not have proper language proficiency results, valid background investigations, or signed non-disclosure agreements, which are required under the contract. These issues have reoccurred at the DEA since 2010, as identified in two previous OIG audits of DEA linguist contracts. Further, in the area of quality assurance (QA), the DEA failed to develop a Quality Assurance Surveillance Program (QASP) for the contract and relied on Conduit to conduct all QA activities; however, Conduit could not provide documentation that the services it provided met the contract requirements and its own quality standards. Additionally, the DEA **did not address Conduit's non-compliance** with contract requirements and paid an extra \$33,421 to another contractor since Conduit was unable to provide all the favorably-adjudicated Arabic linguists that the DEA needed. Further, we found that the DEA has no guidance on the administration of service contracts and its contracting personnel were unfamiliar with the Service Contract Labor Standards (SCLS). As a result, the DEA approved and paid Conduit price adjustments for the contract, which included increases to profit and general and administrative expenses (G&A) prohibited by the Federal Acquisition Regulation (FAR). We also found that Conduit did not properly pay all fringe benefits to linguists in accordance with the SCLS and the U.S. Department of Labor (DOL) Wage Determinations (WD). Finally, the **DEA's definition** of requirements for this contract lacked support and a defined methodology, creating difficulties for both the DEA and Conduit with regard to the linguists required by the contract.

Linguist Requirements

The translation and analysis of Title III wiretaps, often used in significant drug cases, are important to the DEA's efforts to bring to justice organizations and individuals involved in the growing, manufacture, or distribution of controlled substances. Additionally, given the sensitive nature and potential use of these translations in investigations, it is of the utmost importance that contract linguists are carefully screened, translations are verified, and contract terms are fully enforced. However, despite the nature of this work, we found deficiencies in compliance with linguist language proficiency testing, linguist security, and adherence to contract terms that raise questions regarding **the DEA's management of this contract and the contractor's performance.**

Language Proficiency

In order to establish the credibility and reliability of translation work, the contract required linguists to complete language proficiency testing prior to working under the contract. The contract stated that language proficiency testing in the

source language and English was required for all linguists in the four basic communications skills of listening, reading, writing, and speaking. Upon completion of testing, linguists were awarded certificates indicating sufficient proficiency in the source language and English for translation work. Evidence of language proficiency testing with acceptable results from testing organizations listed in the contract was required to be submitted to the DEA Task Monitors (TMs) for all linguists prior to working under the contract.

The DEA Contract Administration Plan also required that DEA TMs obtain, track, and periodically review language proficiency certificates to ensure that the certificates on file were current. However, despite this obligation and the importance of using language-proficient translators, we determined the DEA TMs were unaware of this requirement and never asked Conduit for proficiency testing results. Additionally, Conduit never provided these results to the DEA for any linguist who worked under the contract.

To assess the magnitude of this concern, we examined an initial sample of 30 out of 490 linguists who worked under the contract. We determined that 28 of the 30, or 93 percent, of the linguists did not have the required language proficiency testing completed prior to working under the contract.⁷ We tested an additional five linguists who were responsible for administrative duties such as scheduling and reviewing linguist work, bringing our sample to a total of 35 linguists. One of the five additional linguists did not have the required language proficiency testing completed prior to working under the contract. Despite this material non-compliance, Conduit billed and the DEA paid an estimated \$2,493,784 for the 29 linguists without valid language certifications.⁸ According to DEA officials, because the DEA accepted the services provided by Conduit related to these 29 linguists it is their position that the DEA in essence waived the contract requirement related to language proficiency. However, the DEA did not provide us with any documentation supporting that the DEA was aware of the non-compliance with the contract requirements when it accepted and paid for the services. Therefore, we do not believe that the DEA has shown that it received what it contracted and paid for and we question the \$2,493,784 as unallowable.

⁷ The 490 total linguists is our estimate based on data provided by the DEA because Conduit provided an inaccurate and incomplete listing of linguists who worked under the contract. Conduit explained that a list of linguists who worked under the contract was not readily available and developing the list would be very labor intensive.

⁸ This calculation was based on the approximate total hours worked for these 29 linguists and the average cost per hour for each linguist. The average cost per hour was based on costs for both field divisions for Spanish and common languages from all years of the contract. Due to limitations related to price adjustments, which we discuss in the *Service Contract Requirements and Contractor Payments* section of this report, we could not determine the exact amount Conduit billed DEA for these 29 linguists because it would require review of all invoices for over 1,900 task orders.

Language Proficiency Waivers

In December 2016 and January 2017, after we asked Conduit for the language proficiency test results, the Contracting Officer signed waivers for the writing portion of the test for 125 linguists. **We believe the DEA's approval of the waivers occurred as a result of our audit work.** This disregard for contract requirements affects the credibility and reliability of linguist work, which increases the risk of negatively impacting DEA investigations.⁹ We believe it is important that the DEA exercises appropriate controls over linguists to ensure the credibility and reliability of the language translations and transcriptions used by the DEA.

Specifically, the contract indicated that waivers were to be submitted and approved along with a justification on an individual basis. According to DEA officials, the justification for the 125 waivers was the result of a backlog in the re-certification process at the third party testing vendor. We do not believe the waivers or their justification meet the contract requirements. First, these waivers were issued as a mass approval rather than on an individual basis. Second, a backlog in the re-certification process at the third party testing vendor was not a relevant justification for at least 29 of the 125 linguists.¹⁰ We found that 29 of the 35 linguists in our original sample never completed initial language proficiency testing, meaning they were not in the re-certification process.

In addition, our review of the 35 linguists uncovered further evidence that DEA did not have an adequate justification to approve these waivers, including: (1) 6 linguists who received waivers had already received their language proficiency certifications and did not need a waiver; (2) 10 linguists needed more tests than only the writing portion to be fully certified and allowed to work under the contract; and (3) 21 linguists were already working under the contract prior to receiving a waiver. Finally, the DEA Contract Administration Plan stated an inordinate amount of waivers may be indicative of substandard performance.¹¹ We found no evidence that the Contracting Officer questioned the large number of waiver requests before approval. Overall, we believe the Contracting Officer did not adequately review or justify the waiver requests, but rather approved 125 waivers due to our inquiry during this audit.

As discussed previously under *Prior Reports*, in a February 2012 audit report on another DEA linguist contract, the OIG identified similar problems with linguist language proficiency certifications and recommended that the DEA implement procedures to ensure linguists have been properly certified, that certifications are kept current, and that only certified linguists work under the contract. Based on

⁹ We did not review, as part of this audit, how translations and transcriptions are used in connection with legal proceedings.

¹⁰ Our analysis of language proficiency testing results was limited to 35 out of 490 linguists. **The DEA provided waivers for 125 linguists. Therefore, we did not assess the adequacy of DEA's blanket justification for all 125 linguists.**

¹¹ **The DEA Contract Administration Plan does not define an "inordinate amount."** However, 125 linguists is 26 percent of the total 490 linguists that worked under this contract.

the results of our testing in our audit of the Conduit contract, it appears this issue was not adequately addressed despite our prior recommendations and may be a systemic issue for the DEA affecting multiple contractors across multiple years. The DEA's corrective action for the lack of linguist language proficiency certifications, in response to the February 2012 audit report, was to retroactively approve waivers for language proficiency. Therefore, we believe that approving waivers is not an effective form of corrective action and does not fully address the issue or prevent it from reoccurring.

Conduit's Language Proficiency Testing

According to Conduit officials, its language proficiency testing provider as identified in the contract only tests proper grammar and language skills. However, knowledge of slang, street vernacular, colloquialism, and idiomatic expressions is critical to work as a linguist under the contract. According to Conduit, it uses two tests to evaluate grammar and language skills in these areas: (1) **Conduit's** internally developed certification tests linguists in the skills of listening, writing, reading, comprehension, translation, computer knowledge, slang-colloquialism, typing, and speaking prior to being hired and (2) **Conduit's International** Organization for Standardization (ISO) Transcript/Summary proficiency assessment re-tests the linguists in listening, writing, accuracy, comprehension, translation, and slang-colloquialism on an annual basis. However, the DEA has not reviewed or approved either test. Additionally, Conduit uses these two tests to assess proficiency in Spanish only. Conduit uses a professional organization from the list included in the contract to test languages other than Spanish.

While the contract required language proficiency results from a professional organization, such as those listed in the contract, we believe the DEA should review **Conduit's tests to determine whether they** should be used to test Spanish linguists. The DEA should also address whether using other testing would be better suited to assess the skills linguists need to work under the contract.

DEA's Response to the Language Proficiency Issue

In our February 2017 Management Advisory Memorandum (MAM), we presented the language proficiency issues to the DEA. In its response, the DEA **stated that not obtaining language proficiency test results was an "administrative detail" and to improve compliance**, the Contracting Officer will provide additional information to the COR and TM to ensure a complete understanding of contract requirements. The Contracting Officer will also ensure that the requirements for language proficiency are met and will retain authority to provide waivers for language proficiency when sufficiently justified in writing by the contractor and recommended by the COR/TM. However, as it relates to the estimated \$2,238,077 paid for linguists without valid language certifications, the DEA stated that

payments and work products were already accepted and approved.¹² Therefore, no further action would be taken.

We take exception to the **DEA's interpretation that the** missing language proficiency test results are an administrative detail because without the language proficiency results, the DEA cannot ensure it received the required level of service as stipulated in the contract. This disregard for contract requirements affects the credibility and reliability of linguist work, which increases the risk of negatively impacting its investigations. This is the third OIG audit to identify issues related to language proficiency for contract linguists.¹³ However, **the DEA's actions** have not fully addressed the issues.

Additionally, the DEA did not provide details regarding what additional information will be provided to the COR and TM to ensure complete understanding of contract requirements or how the Contracting Officer plans to ensure the requirements for language proficiency are met. The DEA also did not address what constitutes a sufficient justification for a waiver for language proficiency testing. Lastly, the DEA did not adequately address the estimated \$2,238,077 the DEA paid for linguists without valid language proficiency test results.¹⁴ The DEA stated in its response to our MAM that the payments and work products were already accepted and approved for payment. As mentioned previously, DEA officials told us it is the **DEA's** position that, by accepting the services, the DEA in essence waived the contract requirement related to language proficiency. Again, however, the DEA did not provide us with any documentation to support that the DEA was aware of the non-compliance with contract requirements when it accepted and paid for the services. We do not believe that the DEA has shown that it received what it contracted and paid for. Therefore, we recommend the DEA remedy the \$2,493,784 paid for linguists without valid language proficiency testing results. We also recommend the DEA establish procedures to ensure that linguists working under a DEA linguist contract have the proper language proficiency test results; evaluate the existing language proficiency testing to determine whether other testing is better suited to assess the skills needed by linguists to perform the work under the contract; and develop guidance for what situations warrant language proficiency waivers.

Security Requirements for Linguists

Under the contract, all linguists and contractor personnel directly involved with the management of linguists were required to receive a background

¹² The \$2,238,077 was our preliminary calculation identified in our MAM that was based on the approximate total hours worked for the linguists and the average cost per hour for each linguist for both divisions for Spanish and common languages from the base year of the contract.

¹³ OIG, *SOS International, Ltd.*

¹⁴ As mentioned earlier, \$2,238,077 was our preliminary calculation that we identified in our MAM. However, \$2,493,784 is our final calculation based on the average cost per hour across all years of the contract.

investigation and meet eligibility and suitability requirements. According to DEA officials, for each prospective linguist, DEA Security Programs reviews a security application consisting of the Standard Form 85P, criminal record check results, credit reports, a Foreign Relatives Statement (if applicable), and a drug use statement. If security concerns are not present or are mitigated, DEA Security Programs schedules a background investigation.¹⁵ Once favorably adjudicated, a **linguist's background investigation is valid for 5** years as long as the linguist is continuously working and there is no break in employment greater than 2 years. A DEA official told us that prior to July 2016, all linguists with background investigations in process received waivers, valid for 6 months, to allow them to start working under the contract.

According to the DEA Security **Clause in the contract, if a contractor's** employee does not perform any work under the contract for a period of 24 months **after DEA Security Programs has issued a favorable adjudication, the contractor's** employee is required to submit a new security application to the COR or TM and requires a new favorable adjudication before he or she can perform any work under the contract.¹⁶ The DEA modified the contract in July 2016 to require a series of National Agency Checks for linguists who have a lapse of employment greater than 6 months, but less than 24 months to ensure that security concerns do not exist before the linguist can work under the contract. This modification also shifted the responsibility for the security applications from the TMs in the field divisions to the COR at SOD. As a result of this change, DEA Security Programs would only grant waivers, valid for 6 months, for linguists with background investigations in process and an actual need for the linguist to work. An SOD official stated that, before this change, linguist security applications were submitted and background investigations scheduled even when there was not a need for those additional linguists. According to DEA Security Programs, SOD can now ask for an expedited review for approving linguists to work under the contract, based on an operational need. As of April 2017, the DOJ granted DEA temporary authority to grant waivers, for unclassified contracts, after a linguist submits the Standard Form 85P electronic questionnaire for investigative processing, but **before the linguist's background** investigation has been scheduled. According to a Conduit official, Conduit was unaware of the option for expedited reviews or waivers for linguists in order to meet contract requirements.

We reviewed documentation from DEA Security Programs for our sample of 35 linguists that we previously discussed and found that:

- The Regional Program Manager (who also worked as a linguist) never had a completed background investigation prior to working or during the years he worked under the contract, from 2012 to 2014;

¹⁵ As of January 2016, the National Background Investigations Bureau under the Office of Personnel Management is responsible for conducting background investigations.

¹⁶ DEA Security Clause, DEA-2852.204-83, *Public Trust Positions-DEA Contractor Security Requirements for Access to Sensitive But Unclassified Information/U.S. Citizenship Required.*

- The Denver Field Division Supervisor (who also worked as a linguist) never had a completed background investigation until 4 years after she started working under the contract; and
- Two linguists, in addition to not having the required language proficiency testing, had approved waivers that lapsed while their background investigations were in process, but they continued working under the contract.¹⁷

Despite this non-compliance, the DEA paid an estimated \$505,717 for linguists and a Regional Program Manager without valid background investigations. DEA officials told us that, because the DEA accepted the services provided by Conduit related to these linguists, it is their position that the DEA in essence waived the contract requirement related to security. Once again, however, we were not provided with any documentation to support this conclusion, and we remain concerned by **the DEA's disregard for contract requirements**. Therefore, we question the \$505,717 as unallowable and recommend that the DEA remedy the \$505,717 paid for linguists and the Regional Program Manager without valid background investigations.

In the *Prior Reports* section, we discussed similar OIG findings in a February 2012 audit report for another linguist contractor, where the OIG found that the DEA violated its own security procedures and allowed linguists to work under the contract prior to receiving approval for access to DEA Sensitive information. The OIG recommended that the DEA implement procedures to ensure requirements for periodic background investigations are tracked and accomplished timely, approvals for access to DEA Sensitive information are completed, current, and maintained. During the course of our audit, we found that the DEA no longer conducts the security background investigations for linguists. In addition, the DEA did not implement procedures until July 2016 to prevent linguists from working under the contract prior to receiving a completed background investigation, or to ensure the necessary steps are taken to request a waiver, when justified, while a **linguist's** background investigation is in process.

DEA's Contract Administration Plan states that the COR is responsible for tracking and ensuring that all linguists assigned to the contract have successfully completed security background investigations in accordance with the contract terms. Additionally, the COR is required to maintain a list of names of all linguists who are assigned to perform under the contract and is required to notify Conduit in writing that a linguist has been cleared to begin work under the contract. However, the COR does not track individual background investigations. According to the

¹⁷ Conduit provided documentation indicating that it received approval from the DEA via email for the linguists to work on the contract. However, the email correspondence was not sufficient evidence to support that the linguists in our sample, prior to working on the contract, had received favorably-adjudicated background investigations or approved waivers while the investigation was in process. The DEA was unable to provide this documentation.

COR, in the Linguist Security Team at SOD maintains this information.¹⁸ In addition, Conduit officials told us they have never had any communication with the COR and did not receive any notification in writing from the COR when linguists were cleared to work.

Further, the contract required that all linguists complete a non-disclosure agreement which prohibited the loss, misuse, or unauthorized disclosure of sensitive information, prior to working under the contract. The non-disclosure agreement stated that disclosure of information could result in the impairment of national security, place human life in jeopardy, result in the denial of due process to a person who is the target of an investigation, or prevent the DEA from effectively discharging its responsibilities. We found that the DEA did not have signed non-disclosure agreements on file for 13 of the 35 linguists, in our sample, prior to working under the contract. The DEA paid an estimated \$661,885 for linguists without signed non-disclosure forms. DEA officials told us that, because the DEA accepted the services provided by Conduit related to these linguists, it is their position that the DEA in essence waived the contract requirement related to non-disclosures. However, we were not provided documentation to support this conclusion, and we remain concerned by **the DEA's disregard for contract** requirements. Therefore, we question the \$661,885 as unallowable and recommend the DEA remedy the \$661,885 in unallowable costs for linguists without signed non-disclosure agreements on file prior to working under the contract.

We also found that the non-disclosure agreements we reviewed did not contain the language set forth in 5 U.S.C. § 2302(b)(13) prohibiting their application to limit whistleblower disclosures. Thus, we recommend the DEA ensure that all linguists sign a non-disclosure agreement prior to working under the contract and consider including the language identified in 5 U.S.C. § 2302(b)(13) in all non-disclosure agreements.

In its response to our MAM, the DEA stated that before April 2014, the Division Security Officers at the field divisions managed the linguist contract, including communication with the linguist contractors and tracking linguist hours and availability. Due to logistical and communication challenges resulting from this decentralized approach, linguists were occasionally allowed to work without appropriate vetting and approval by DEA Security Programs. In April 2014, the COR centralized management of the contract and modified the contract in July 2016 to identify the COR as the sole point of contact for all security packages. The COR now centrally coordinates the vetting process and manages linguist work hours and availability. As a result, DEA now consistently tracks all security applications from the date received to approval or disqualification; time, attendance, and location of

¹⁸ The Linguist Security Team is comprised of SOD personnel who assist the COR, maintain a centralized database for all languages, and track the approval status for each linguist working for the DEA. Individuals on the team are not part of DEA Security Programs, which is responsible for enforcing the security requirements under the DEA Security Clause 2850.204-83.

all approved linguists; waiver expirations; and due dates for periodic reinvestigations.

Also in response to our MAM, DEA Security Programs conducted an audit of all linguists who worked under this contract in the Phoenix and Denver Field Divisions from September 2016 through January 2017 and determined that each linguist had been approved before receiving access to DEA information.¹⁹ For the non-disclosure agreements, the COR has begun the process of verifying that agreements are in place for all linguists working under the contract and will maintain a copy of the agreement as part of the approval package maintained for each linguist.

Finally, the DEA stated in its response that the Contracting Officer will provide additional guidance to all parties regarding verification of security clearances and non-disclosure agreements as a result of the concerns we raised in the MAM regarding security requirements for linguists. However, the DEA did not provide the guidance or procedures recently implemented as indicated in its response.

Therefore, we recommend that the DEA formalize procedures to ensure that all linguists who work under the contract have favorably-adjudicated background investigations and ensure that waivers are tracked to confirm that no lapses occur while background investigations are in process. Additionally, we recommend that the DEA develop procedures to inform Conduit about security developments, including issuance of waivers and the status of linguist background investigations.

Compliance with HSPD-12

In August 2004, the Department of Homeland Security issued Homeland Security Presidential Directive 12 (HSPD-12). HSPD-12 is a directive that established requirements for an identity credentials standard issued to government employees and contractors, including contractor employees, who require access to federal facilities. HSPD-12 defined secure and reliable identification as identification that:

- **is issued based on sound criteria for verifying an individual's identity;**
- is strongly resistant to identity fraud, tampering, counterfeiting, and terrorist exploitation;

¹⁹ According to the DEA, approval includes reviewing a security application containing a Standard Form 85P completed by the linguist; criminal record check results; credit reports; a Foreign Relatives Statement, if applicable; and a Drug Use Statement. If security concerns are reflected in any of these documents, DEA Security Programs makes efforts to mitigate the concerns or disqualifies the prospective linguist. If security concerns are not present or are mitigated, DEA Security Programs schedules a background investigation with the National Background Investigations Bureau. After the background investigation is completed and submitted, DEA Security Programs reviews it and if the background investigation does not reflect derogatory information or such information is mitigated, DEA Security Programs grants full approval to the linguist for access to DEA information or facilities.

- can be rapidly authenticated electronically; and
- is issued only by providers whose reliability has been established by an official accreditation process.

Additionally, HSPD-12 directed the Department of Commerce to develop a Federal Information Processing Standards (FIPS) publication that defined a common identity credential. FIPS Publication 201-2 identified the personal identity verification (PIV) card as the government-wide identity credential to be used by government employees and contractors accessing federal facilities and information systems. FIPS Publication 201-2 also defined requirements for PIV cards and expressly stated that the requirement for PIV cards cannot be waived. According to FIPS Publication 201-2, PIV cards are required to have the following information on the front or back of the card:

- photo (top of head to shoulder);
- full name;
- employee affiliation (i.e., contractor);
- agency, department, or organization;
- card expiration date;
- color-coding for employee affiliation (green-contractor);
- agency card serial number; and
- issuer identification number.

The contract stated that linguists required physical access to DEA facilities. **According to the DEA's response to our MAM**, DEA Security Programs must approve all linguists for access to DEA information or facilities before they can work under a DEA linguist contract. We found that linguists with access to DEA information or facilities received a facility access badge that only included the linguist name. These badges were not PIV cards and did not include a picture or other biometric data as required by FIPS Publication 201-2. According to DEA Security Programs officials, the Division Security Officers decided whether linguists received PIV cards. The Division Security Officer at each field division confirmed that linguists were not provided PIV cards. However, we determined the **DEA's** decision to not provide linguists PIV cards violated HSPD-12 and FIPS Publication 201-2.

Additionally, the contract required Conduit to submit to the DEA Contract Personnel Reports, which report all linguists assigned to work under the contract, in order to comply with HSPD-12. The contract stated that Conduit was required to update the reports quarterly and include any additions, updates, or changes in the status of personnel, such as whether a linguist was actively working and thereby required access to DEA facilities. DEA Security Programs was responsible for ensuring that Conduit submitted the reports and maintaining the information in **DEA Security Programs' files**. In our efforts to determine whether Conduit complied with this requirement, it took several attempts to determine the group in DEA Security

Programs that monitors the email account where Conduit was required to send the reports. However, once we identified the group responsible, we found that the group does not track or review the reports submitted by Conduit because of staffing limitations. Although Conduit submitted the reports, we believe that because the DEA does not track or review reports submitted by Conduit, the DEA has no assurance that the reports are in accordance with the contract terms and HSPD-12.

Therefore, we recommend that the DEA ensure linguists working under DEA linguist contracts are issued PIV cards that meet the requirements defined in FIPS Publication 201-2 and HSPD-12. Further, we recommend that the DEA develop procedures to ensure that the Contract Personnel Reports Conduit is required to send to the DEA are reviewed, tracked, and maintained in accordance with HSPD-12 and the contract terms and conditions.

Contract Administration and Oversight

Title III wiretap translation work performed by linguists is used to support **the DEA's drug investigations** and, therefore, its ability to properly carry out its important mission to bring to justice individuals and organizations involved in the manufacture or distribution of controlled substances destined for or in the United States. Sufficient contract administration and oversight is essential to ensure sensitive information is properly safeguarded, translation services meet the quality standards for use in federal investigations, and contract terms and conditions are fulfilled. Despite the importance of **these translations to the DEA's mission, we** identified a lack of contract administration and oversight by the DEA that led to contract performance violations.

DEA Contract Administration Plan

The Office of Acquisition and Relocation Management developed a Contract Administration Plan for the contract. The purpose of the plan was to provide a framework and guide for the effective management and control of the contract to ensure successful performance of the requirements. The Contracting Officer has the ultimate responsibility and authority for contract administration. The Contract Specialist provides acquisition support to the Contracting Officer and functions as an intermediary between the Contracting Officer, the COR, TMs, and the contractor.²⁰ We found that the plan contained Contract Administration Checklists for TMs, CORs, and Contract Specialists to complete each month, which the Contracting Officer periodically reviews. The checklists required that the Contracting Specialist and COR review the contract file on a monthly basis to ensure that mandatory documentation was included in the file, such as the Customer Satisfaction Surveys, Contractor Performance Assessment Reports, Contract Administration Reports, and Performance Evaluation Meeting notes. However, we did not find these checklists in the contract file.

²⁰ The Contracting Specialist is not given a delegation letter.

According to DEA officials, since the checklists were not included in the contract file with the plan, they were not required to be completed. However, this explanation does not eliminate the requirement set forth in the Contract Administration Plan. As such, we recommend the DEA ensure that the Contract Administration Plan is enforced in its entirety and ensure completion of the Contract Administration Checklists as identified in the plan.

Delegation of Duties

For the 8 regional linguist contracts, the DEA appointed only 1 COR and assigned 22 TMs. The Contracting Officer provided the COR and TMs each with a delegation letter that identified specific authorities and responsibilities delegated to the COR or TMs. The authority conferred upon each individual was not to be re-delegated.

Contracting Officer's Representative

We found that the COR was not performing the majority of the responsibilities as identified in **the COR's** delegation letter, and that many of the responsibilities were completed by other individuals. For example, according to the COR delegation letter and the contract, the COR is responsible for reviewing and approving or disapproving invoices for payment. The contract specifically states that the COR is responsible for final approval of invoices. However, the COR did not review or approve invoices, which were instead reviewed by others in the Accounting Division at SOD. We examined all 47 invoices related to a sample of 15 task orders totaling \$608,848, out of 1,977 task orders totaling approximately \$31 million. We found 4 of the 47 invoices included travel expenses. We determined that Conduit improperly billed some travel expenses, yet all of these invoices were still approved by the DEA. Based on this review, we identified \$924 of unallowable travel costs due to incorrect mileage and mileage rates, incorrect per diem rates, and costs not associated with official business travel. Thus, we recommend the DEA remedy the \$924 in unallowable travel costs for incorrect mileage, mileage and per diem rates, and costs not associated with official business travel. We also recommend the DEA review all task orders issued under the contract where the DEA reimbursed Conduit for travel costs to ensure the travel costs were properly reimbursed.

The DEA has specific training requirements for CORs; however, if other individuals are performing the COR duties, there is an increased risk that the duties will not be sufficiently completed, will be done improperly, or issues will go unaddressed since a central person, who has completed COR training requirements, is not responsible for the COR duties. As noted in the *Prior Reports* section, in a February 2012 audit report the OIG identified deficiencies **with the COR's** responsibilities for another DEA linguist contract and recommended the DEA evaluate COR responsibilities for linguist contracts. However, it does not appear that the corrective action taken by the DEA to address the issue were applied to its other linguist contracts because in this audit we found that some of the COR responsibilities were completed by other individuals.

Additionally, in its response to our MAM, the DEA stated that in April 2014 the COR centralized the linguist program by taking over management of all regional linguist contracts. The DEA stated that each regional linguist contract was modified to identify the COR as the sole point of contact for all security packages and linguist-related information. However, the DEA did not modify the regional linguist contracts until July 2016 to reflect that the COR was the point of contact for security package processing. Further, the modification did not state that the COR was the sole point of contact for linguist-related information and the DEA did not provide a revised delegation letter for the COR reflecting this change. The DEA stated in its response that the COR now centrally coordinates the vetting process, manages linguist work hours and availability, and works directly with the linguist companies to ensure they meet requirements of the contract, such as the minimum linguist-per-office requirement. However, the DEA provided no documentation to support these changes and according to Conduit officials they have had little to no contact with the COR during the contract period. We are also concerned about whether it is feasible for one individual to effectively manage eight regional linguist contracts in addition to serving as COR for other DEA contracts.

Therefore, we recommend the DEA review the COR delegation letter and revise as necessary to **ensure the COR's** responsibilities are properly documented. We also recommend the DEA evaluate whether more than one COR for the eight regional linguist contracts would result in better management and oversight, develop policies and procedures to ensure the COR performs the responsibilities as delegated, and ensure that other responsibilities assigned to SOD for the linguist program are documented and followed.

Unmet Contract Requirements that Impacted COR Responsibilities

According to the contract, Conduit was responsible for notifying the COR upon task order completion. As discussed earlier, during our review of task orders in our sample, we found that Conduit did not notify the COR when a task order was completed. This notification and understanding is important for DEA to best manage the deobligation of unexpended funds authorized for each task order. Additionally, the contract required that Conduit have an automated task order entry and tracking system with the capability to capture and track the status of subsequent task orders. In November 2016, when we initially asked Conduit officials about this requirement, they explained that Conduit was testing a pilot of a fully automated system, but the system was not fully operational. In October 2017, Conduit officials updated their response by explaining that Conduit had this system in place since December 2015. However, Conduit did not provide any documentation to support its use of this system.

Therefore, we recommend the DEA ensure that Conduit notifies the COR when a task order for the contract is completed. We also recommend the DEA ensure Conduit developed and implemented an automated task order entry and tracking system as required by the contract.

Task Monitors

For the regional linguist program, the DEA assigned 22 TMs total — with one TM per field division for the Conduit contract — and delegated specific contract administration duties to them, including contract performance. Specifically, the contract stated that TMs were responsible for:

- receiving all deliverables;
- inspecting and accepting services provided;
- evaluating performance;
- certifying acceptance of services prior to payment; and
- approving invoices.

We found the Denver Field Division had the same TM throughout the life of the contract; however, the Phoenix Field Division's TM changed three times during the contract period. The DEA Contracting Officer was not aware that the Phoenix TM had left until we asked to speak with the individual during our audit. We determined that this Phoenix TM also never had a signed delegation letter. Due to our inquiry during this audit, the Contracting Officer assigned a new TM for the Phoenix Field Division, and issued a delegation letter.

We found that the TM at the Denver Field Division completed a Verification of Receipt and Acceptance form, **which includes the statement "...the goods or services rendered on the invoices below have been accepted and meet the specifications..."** However, this form is connected to the invoices and does not include any language on the actual work performed by the linguists. The TM only reviews hours worked by linguists when completing this form. The TM does not review the translations or other work performed by the linguists, and does not evaluate actual contractor performance for each task order. Thus, the TM only accepts the services Conduit provided based on their review of the invoice Conduit submitted. We found the same form is used at the Phoenix Field Division, but was being completed by other field division personnel instead of the TM.

The DEA Contract Administration Plan also identified additional responsibilities for TMs, such as:

- At least monthly, obtain completed Customer Satisfaction Survey forms from Case Agents to document the agents level of satisfaction with the contractor;
- Complete Contractor Performance Assessment Reports monthly to document **the contractor's compliance with the contract;**
- Complete the COR/TM Contract Administration Report bi-annually;
- Track contract requirements, such as ensuring delegation letters, linguist security access approvals or waivers, and linguist language proficiency results are up to date and in the file;

- Ensure that customer satisfaction surveys, contractor performance assessment reports, and approvals for overtime and travel are retained in the file;
- Ensure that the COR completes the contractor performance rating in the Contractor Performance Assessment System; and
- Meet regularly with the contractor and retain notes from these meetings.

Based on these responsibilities, each TM should submit at least 26 forms or reports each year. At the Denver Field Division, we found that the TM did not submit any of the required forms or reports in 2013 and submitted a limited number in 2014 and early 2015. The Denver TM was generally consistent in submitting the Customer Satisfaction Survey, Contractor Performance Assessment Report, and Contract Administration Report from July 2015 through April 2017. However, the Denver TM completed the Customer Satisfaction Survey instead of the Case Agents. In addition, the **Denver TM's** forms or reports were often submitted months after the reporting period, and many of the Contractor Performance Assessment Reports were not signed by the contractor as required.

At the Phoenix Field Division, we found that the TM did not submit any of the required forms or reports in 2013 and 2014, and only submitted five forms or reports during 2015 and early 2016. However, the Phoenix TM was generally consistent in submitting the required forms or reports from January to March 2017. We found neither TM in the Denver or Phoenix Field Divisions met regularly with Conduit or kept meeting notes and the COR never completed the Contract Administration Report.

As we discussed earlier in the *Prior Reports* section, a prior OIG audit found that the DEA did not hold and document performance meetings with the contractor and the OIG recommended that the DEA implement procedures to ensure meetings between the contractor and the DEA are regularly held, documented, and included in the contract file. However, it does not appear that the corrective actions the DEA took to address this discrepancy were applied to its other linguist contracts because in this audit we found the DEA did not hold regular meetings with Conduit and did not document the meetings in the contract file for this contract.

As we previously discussed, we identified 29 linguists out of our sample of 35 that worked on this contract without the required language proficiency. Conduit was required by the contract to submit language proficiency testing results to the TM for all linguists prior to working under the contract. Neither TM in the Denver nor Phoenix Field Divisions received the language proficiency testing results for any linguist who worked under the contract. When we asked Conduit about the language proficiency results, we were told no one from the DEA requests them so Conduit does not send them to the DEA.

Task Monitor Training

According to an Office of Management and Budget Memorandum on the Federal Acquisition Certification for CORs, the term COR not only refers to positions technically designated as CORs, but also to TMs and others who ensure proper development of requirements and assist the Contracting Officers in managing their contracts. The memorandum requires these TMs and other individuals to complete training based on their level of experience and the contracting vehicle used. However, the DEA did not require the 22 TMs assigned to the regional linguist program to receive training before serving in the TM position, even though they were delegated responsibilities related to contract administration and performance.

In its response to our MAM, the DEA stated it implemented a new pilot program that will require all TMs to complete Federal Acquisition Certification (FAC)-COR training and receive FAC-COR Level I certification. In its response, the DEA also stated that 8 of the 22 TMs assigned to the linguist contracts have successfully completed the requisite level of training, another 9 TMs are in the process of completing it, and the Contracting Officer continues to work with the remaining 4 TMs for completion of the training.²¹ On April 26, 2017, the DEA provided documentation of the FAC-COR certifications for the TMs. DEA provided documentation for every TM. However, the documentation showed that only eight TMs received certificates confirming they received at least the FAC-COR Level I certification.²² The documentation for the remaining 14 TMs supported that the TMs completed the DEA designated course necessary for FAC-COR Level I certification.

Additionally, we found that the DOJ has agency specific requirements for all levels of FAC-CORs. According to the Federal Acquisition Institute website, the DOJ requires that all levels of FAC-CORs complete the following three additional Federal Acquisition Courses (FAC) or proof of their equivalents: FAC 018 Green Purchasing for Civilian Acquisition, FAC 031 Small Business Programs, and FAC 043 Ethics and Procurement Integrity for the Acquisition Workforce. The DEA did not address or provide documentation to support whether the TMs or COR completed these additional courses.

Therefore, we recommend the DEA ensure that the TMs and COR complete the three Federal Acquisition Courses required by the DOJ for all levels of FAC-COR and provide documentation to support completion of these courses. We also recommend the DEA ensure that TMs complete documentation as required by the contract and the DEA Contract Administration Plan and communicate regularly with the COR and Contracting Officer, including notifying the Contracting Officer prior to any change in the TM assignments.

²¹ In its response to our MAM, the DEA stated that there were 21 TMs assigned to its linguist contracts; however, based on documentation provided by the DEA, the correct number is 22 TMs.

²² Two of the 22 TMs had FAC-COR Level II certifications.

Contract Reports and Deliverables

As noted previously in this report, **both the DEA's Contract Administration Plan** and the contract identified reports or other documentation that DEA personnel were required to complete as part of the administration and oversight of the contract. The contract also identified specific deliverables that Conduit was to submit to the DEA on a recurring basis. We found that the DEA and Conduit were not completing this documentation correctly or at all and we detail these issues below.

Contractor Performance Assessment Reports

FAR subpart 42.1502 states that for contracts, agencies should prepare evaluations of contractor performance for each contract that exceeds the simplified acquisitions threshold.²³ DEA contract clause 2852.242-70, *Contractor Performance Assessment* further states that for contracts with a performance period exceeding 18 months, inclusive of all options, the DEA will perform annual interim performance assessments and a final performance assessment upon contract completion; and **the DEA will assess the contractor's performance in the areas of quality of service, schedule, cost control, business relations, management of key personnel, and any other appropriate areas under the contract.** The clause further states that the DEA will prepare the contract performance assessments reports electronically using the Contractor Performance Assessment Reporting System (CPARS).

However, the DEA did not provide any documentation to support that it completed contractor performance assessment reports for the contract. According to DEA officials, the contract was mistakenly archived in CPARS and CPARS did not generate any email requests to the appropriate personnel to submit the assessment reports. As a result, the DEA did not complete these reports for the contract in accordance with the FAR. While the contract may have been archived in the system erroneously, it was still the responsibility of the Contracting Officer, per the DEA Contract Administration Plan, to complete these assessments in accordance with the FAR and the contract terms and conditions. Had the DEA been tracking this requirement, the error could have been identified prior to our request for the CPARS assessments and more quickly than 5 years into the contract. Additionally, we highlighted previously in the *Prior Reports* section that the OIG found in a previous audit of another DEA linguist contract that the DEA did not complete the performance assessment reports in CPARS for that contract and the OIG recommended the DEA implement procedures to ensure the reports were completed, submitted timely, and maintained in the contract file. However, it appears the corrective action taken by the DEA neither fully addressed this issue, nor prevented it from reoccurring. Thus, we recommend the DEA ensure the Contracting Officer completes a performance assessment report in CPARS for the

²³ FAR Part 2, *Definitions*, defines the simplified acquisition threshold as \$150,000. The DEA awarded the contract with a maximum value of nearly \$133 million.

current year of the contract and completes a final performance assessment report in CPARS upon completion of the contract next year. We also recommend the DEA develop procedures to ensure the Contracting Officer completes the performance assessment reports in CPARS regardless of whether a notification is received from CPARS.

Customer Satisfaction and End of Case Surveys

According to the DEA Contract Administration Plan, the Customer Satisfaction Surveys were to be completed at least monthly to document the Case Agents' **level of satisfaction with the contractor's performance**. Conduit officials told us that they also provide separate surveys to the agents at the end of cases to receive feedback. However, we found inconsistencies with the completion of both types of surveys by Case Agents; some agents completed them, while other agents did not or were not aware of them.

Because the Case Agents work so closely with the linguists, it is important that Case Agents complete Customer Satisfaction Surveys and End of Case Surveys **to provide feedback on the linguists' performance, for use in completing contractor assessments**, and to identify any issues that may need to be addressed by the DEA or Conduit. We recommend the DEA ensure that Customer Satisfaction Surveys are provided to and completed by the Case Agents, and are collected by the TMs on a monthly basis. We also recommend the DEA coordinate with Conduit to ensure Case Agents complete and submit End of Case Surveys to the DEA and Conduit to provide feedback and identify any areas of improvement.

Administrative Report

DEA identified specific deliverables that Conduit was required to complete and send to the DEA as part of the terms and conditions of the contract. One of these deliverables was the Administrative Report, which Conduit was required to prepare and send monthly to the Contracting Officer, COR, and TM.

According to the contract, the Administrative Report was to include three sections: Financial Statement, Personnel Status, and Miscellaneous Comments. The contract identified specific information Conduit was to include for the Financial Statement and Personnel Status sections.

The Financial Statement was required to include:

- a. total expenditures for the reporting period, for each task order, and breakdown by specific tasks;
- b. expenditures and hours of effort used by each individual by task order during the reporting period;
- c. cumulative task order expenditures through the reporting period; and
- d. a summary of total number of hours worked during a specific month in a specific language and a year-to-date running total in order to

determine if the contractor will be reaching the maximum number of hours stated in the contract.

The Personnel Status was required to include:

- a. a brief description of the work performed during the reporting period for each task order, including times of inactivity, and any recruitment by the contractor, training of new personnel by the contractor, or changes to company policies; and
- b. any changes in personnel during the reporting period.

In the contract, the DEA included a sample Administrative Report. However, we found the sample report did not include all the information that was required by the contract. We reviewed an Administrative Report submitted by Conduit and found it followed the sample report included in the contract. As a result, **Conduit's** report was also missing required information. The report we reviewed did not contain expenditures and hours per linguist by task order for the month reported, a summary of the total number of hours worked during the month per language, a year-to-date running total, a brief description of the work performed during the reporting month for each task order, or any recruitment by Conduit or changes in **Conduit's policies**.

We asked Conduit about the missing information from the financial statement section and for a list of linguists who worked under the contract and the hours worked by each individual, but Conduit did not provide this data. Conduit officials explained that its systems do not track that information and, therefore, it is not readily available. According to FAR 52.222-41, *Service Contract Labor Standards (SCLS)*, contractors performing work subject to the SCLS are to keep and maintain a record for each employee, subject to the SCLS, including daily and weekly hours worked by each employee for 3 years from the completion of the work.

We found neither the Contracting Specialist nor the COR performed a detailed review of the reports to identify the missing information. We believe the missing information is important for tracking contractor performance and ensuring contract oversight, especially since the contract has over 1,900 task orders and hundreds of linguists working under it.

As previously mentioned in the *Prior Audits* section of this report, in an OIG report issued in February 2012, we found that another DEA linguist services contractor with the same Administrative Report contract deliverable also failed to submit the reports in accordance with the contract terms and conditions, and the OIG recommended that the DEA implement procedures to ensure the monthly Administrative Reports were completed, submitted timely, and maintained in the contract file. However, it appears the action taken by the DEA in response to the previous audit has not corrected this issue.

Therefore, we recommend the DEA develop controls for contract management to ensure contract requirements are met and applicable laws and

regulations are followed. We also recommend that the DEA require Conduit to submit Administrative Reports that contain all the data required and develop procedures to ensure deliverables are submitted and reviewed for accuracy and completeness in accordance with the contract terms and conditions.

Contract Quality Assurance

As previously discussed, we identified deficiencies with linguist language proficiency testing, security requirements, and **the DEA's** contract administration and oversight. Given these deficiencies, we believe it is imperative that the DEA have an established quality assurance (QA) program to ensure linguist services meet all contract requirements and that linguist work used by Case Agents is accurate, consistent, and contains the necessary information because linguist work is used to support the **DEA's drug investigations**. Despite the importance of effective government QA, we determined the DEA relied solely on Conduit to perform all QA under the contract and failed to ensure Conduit adequately performed QA in accordance with its QA Plan. Consequently, substandard linguist work could **negatively impact the success of the DEA's mission to** bring to justice individuals and organizations involved in the manufacture or distribution of controlled substances destined for or in the United States.

Quality Assurance Surveillance Plan

FAR Subpart 46.4, *Government Contract Quality Assurance*, states that quality assurance surveillance plans (QASP) should be prepared in conjunction with the statement of work and agencies should ensure government contract quality assurance (QA) is conducted by or under supervision of government personnel. Additionally, FAR 16.601, *Time and Materials Contracts*, emphasizes the importance of government QA of contractor performance due to the increased risk to the government when using time and materials contracts.

According to the DEA, the use of linguists is critical to the accomplishment of **the DEA's** mission. However, while the transcripts linguists produce are used in most investigations, we determined that the DEA did not develop a government QASP for the contract and performed limited QA for the contract. According to their delegation letter, TMs were responsible for establishing a surveillance plan that would ensure receipt of the quality and quantity of services required by the **contract. DEA's** Contract Administration Plan for the contract also stated that TMs were responsible for reviewing and accepting work products; receiving, inspecting, or approving interpreting session notes; and delivery of translations and transcriptions. Additionally, the TMs could have arranged for validation of original translation work on an as-needed basis. We found no evidence that the TMs completed any of these items, including reviewing translations.

Instead, we found that the Case Agents at the field divisions perform the only review of linguist work by the DEA. However, Case Agents only review the English summary provided by the linguists as most agents do not speak the languages from the intercepted calls. According to a Case Agent, the linguists

listen to the intercepted calls and summarize the calls into English. According to DEA officials, if the summary indicates that the communications contain information of investigatory interest, it is marked for detailed transcription. The agents will use the information from the translated calls to make decisions about the current case. Therefore, because the work of its linguists are relied upon by agents in the course of carrying out their investigations, the DEA should exercise sufficient QA procedures to ensure the reliability of its language translations and transcriptions.

In its response to our MAM, the DEA stated it intends to negotiate a revised quality control plan and QASP with the contractor. However, the QASP is a requirement that the government is responsible for, not the contractor, and therefore would not be a subject for negotiation. The QASP is the government counterpart to a contractor's quality control plan and is used to manage contract performance by ensuring that the government identifies the QA methods it will use to ensure the contractor's quality control efforts are timely and effective. The QASP directly corresponds to the performance requirements specified in the Statement of Work and details how, when, and by whom the government will survey, observe, test, sample, evaluate, and document contractor performance results to determine whether the contractor performed in accordance with the Statement of Work.

FBI's Foreign Language Program

The Federal Bureau of Investigation (FBI) Foreign Language Program provides quality language solutions, analysis, and cultural expertise to the FBI and its partners. The program is composed of four translation departments that cover languages in specific regions of the world (e.g., Middle East, Europe, Asia, etc.). The FBI has over 1,200 linguists with proficiency in over 96 languages/dialects. The FBI Foreign Language Program develops the foreign language skills of its employees through on-going language testing, assessment, and multi-tiered training strategies designed to build and sustain a high performance workforce. To determine what QA standards and controls the FBI has over linguist work, we interviewed FBI officials from the Foreign Language Program. We found that the FBI has established standards and systematic monitoring of translations. All linguists are required to pass proficiency testing developed by the FBI and linguist work is regularly reviewed. The FBI also uses an internally developed system to assist reviewers in identifying errors with translations. According to the FBI, other agencies have shown interest in using its system.

The FBI is the executive agent of the National Virtual Translation Center (NVTC), which was created to serve the government's translation needs. The NVTC was established by Congress in 2003 to provide timely, accurate, and cost effective translations. According to the FBI, the NVTC complements federal agencies foreign language translation capabilities and provides translation support ranging from high volume surges to immediate needs for language translation. The NVTC offers foreign language translation service for more than 120 foreign languages and dialects.

While the FBI's Foreign Language Program is larger than the DEA's Title III Wiretap Program, we believe that agency-developed testing for linguists could be beneficial to the DEA, especially because of the unique work that linguists perform and the need for knowledge of slang and terminology in the source language beyond just reading and writing comprehension. Additionally, the DEA may find **that utilizing a system like the FBI's may also be beneficial when reviewing work by linguists**. Therefore, the DEA should consider evaluating **the FBI's QA approach** and determine if this approach would enhance its quality control over contract linguist translations.

The work linguists perform is vital to the **DEA's** ability to meet its mission and to its investigations. Therefore, it is important to ensure that the work performed by linguists is reliable, consistent, and accurate. **Because the DEA's response to our MAM did not adequately address our concern**, we recommend the DEA develop its own QASP for the contract to assess the quality and timeliness of services performed by the contractor. We also recommend the DEA develop a QA program and procedures for reviewing and validating linguist work to ensure the work is reliable, consistent, and accurate.

Conduit's Quality Assurance Plan

Despite the DEA's responsibility for QA under the FAR, Conduit was solely responsible for QA for the contract. The DEA required that Conduit develop a plan to ensure adequate QA throughout all areas of contract performance and assure reliability and effective performance. **The DEA's Contract Administration Plan stated** that the COR and TMs should **review Conduit's plan periodically, at least annually**, and request updates if needed. We found the plan the DEA incorporated into the contract did not match the plan Conduit provided to us. The plan incorporated into the contract was only 7 pages; however, the page numbers indicated the full plan was actually 60 pages. The plan Conduit provided to us was 26 pages and was dated February 30, 2012; which is not a valid date and was well before the solicitation was issued on May 3, 2012. We reviewed the plan Conduit provided to us because it was the only plan provided in its entirety.

Conduit's plan emphasized that it was responsible, not the government, for conducting management and QA to: ensure compliance with the terms of the contract; minimize the **level of the government's** involvement; and allow Conduit the responsibility to perform to, or exceed, contract standards. Conduit highlighted that any non-conformance by Conduit, in whole or in part, with contract requirements is a defect and noted that their failure to meet performance measures or failure to comply with regulations may result in contract remedies that could include suspension or termination for cause, reduced payment, or a decision not to exercise contract options. Any non-compliance and appropriate remedy would be determined by the Contracting Officer. When we spoke with Conduit officials in November 2016 about QA for the contract, they told us they had not been enforcing their plan. They also stated they were in the process of reviewing and revising the plan with the goal of having a revised version completed by April 2017, even

though, at the time, the contract was set to expire in October 2017.²⁴ The DEA required the COR and TM to periodically review **Conduit's QA plan; however, we found the COR and TM never reviewed Conduit's plan during the contract period. Conduit's lack of enforcement of its QA plan would** likely have been found by the COR or TM had they conducted the required reviews of the plan.

As referenced previously in this report, the OIG found in a February 2012 audit on another DEA linguist contract that a different linguist contractor failed to fully comply with the requirements in its QA Plan and the COR was unaware of the **contractor's QA Plan** since it was not contained in the contract file. The OIG **recommended the DEA ensure that for future contracts, the contractor's QA Plan is** included in the contract file and given to the appropriate personnel, the plan requirements are periodically reviewed and updated, and the contractor meets the requirements as established in its plan. However, it appears **the DEA's** corrective actions in response to this issue were not implemented for future contracts since we found significant, similar concerns related to **Conduit's QA Plan**.

Concerns with Conduit's Quality Assurance Plan

We identified deficiencies with the QA procedures and positions Conduit detailed in its QA Plan. First, the plan stated that on a daily basis the site supervisor or delegated case leader would conduct quality inspections and report them on the same day to the Quality Manager.²⁵ Conduit officials stated these required inspections were not completed because of the perceived burden of too much paperwork.

Next, Conduit had a Regional Program Manager responsible for: (1) overseeing the administrative duties for the entire region, which included all reporting requirements for funding, task orders, personnel, security, caseload information, and quality control; (2) serving as the local Operations Manager; and (3) conducting regular meetings with the TMs, COR, site supervisors, and case leaders to ensure smooth operations and to receive updates on case progress. Conduit officials stated the Regional Program Manager left the position after 20 months because he believed the responsibilities became too much for one person. Our analysis revealed that the Regional Program Manager worked almost 400 hours as a linguist, in addition to working as the Regional Program Manager. Conduit officials could not provide an adequate justification for why the Regional Program Manager also worked as a linguist when he had several significant responsibilities related to contract administration.

²⁴ The DEA extended the contract period from October 2017 to April 2018.

²⁵ Conduit changed the names of the site supervisor to division supervisor and case leader to point of contact (POC), but did not update their plan to reflect this change. We use site supervisor and case leader in this report since that language was used in **Conduit's** QA Plan. The Quality Manager was responsible for ensuring that quality requirements were effectively established and maintained, ensuring any recommended corrections to performance and operations were successfully implemented, and that each site functioned as detailed in their QA Plan.

Conduit never identified a new Regional Program Manager. Conduit explained that the duties were assigned to a supervisor in each field division. However, **despite Conduit's explanation regarding the** assignment of duties to other personnel, Conduit did not revise its QA plan to reflect its removal of the Regional Program Manager position or identify how and to whom the Regional Program **Manager's responsibilities would be reassigned.** Conduit did not provide evidence to demonstrate that the QA duties of the Regional Program Manager position were being completed, such as the Monthly QA Checklist discussed below. Further, we found Conduit kept the Regional Program Manager position in its calculation of fixed billing rates even though the position was vacant; thus, **Conduit's** fixed billing rates included costs associated with the position. These costs were included in the invoices submitted to the DEA and were reflected in the price adjustments Conduit received under the contract. We discuss this issue in more detail under the *Service Contract Requirements and Contractor Payments* section later in this report.

We also found that Conduit was not completing several quality control tasks listed in the plan, including:

- the Monthly QA Checklist²⁶;
- the Translation Department QA Checklist²⁷;
- the Monthly QA Report;
- the Weekly QA Summary; and
- random sampling.²⁸

According to Conduit's QA Plan, the Monthly QA Checklist along with the monthly random sampling are the critical components of its QA program. When asked about the Monthly QA Report, Conduit officials stated that the reports came from the TMs, but its QA Plan clearly identifies that the reports are to be completed by the Regional Program Manager and submitted to the TM. We found Conduit had not completed the Monthly QA Checklists until we asked Conduit about their QA Plan in November 2016. Conduit required the field division staff to start completing the Monthly QA Checklist in November 2016. Additionally, Conduit officials told us the Translation Department QA Checklist was part of the annual inspection. However, their QA Plan stated that supervisors were to use that checklist to review transcriptions, translations, and validation services. We did not find any evidence that supervisors were using the Translation Department QA Checklist and Conduit officials did not provide any further details on the Translation Department, even

²⁶ The Monthly QA Checklist was to be used by the Regional Program Manager to inspect the quality of the translations, transcriptions, summaries, and the validations and interpreting services. It contains over 40 quality points that can be tracked, measured, and changed to meet target goals set by the DEA. In November 2016, after the initiation of our audit, Conduit reinstated the checklists.

²⁷ The Translation Department QA Checklist was to be completed by the site supervisors when they reviewed transcriptions, translations, and validation services.

²⁸ **Conduit's plan did not identify** a specific individual who was responsible for completing the QA weekly summary, and random sampling.

though their QA Plan showed a site supervisor from the Translation Department was responsible for reviewing validation services.

Finally, Conduit's QA plan referenced several forms that were to be used in the performance of QA, including the Inspection Report for Monitoring and Interception; the Inspection Report for Translation and Transcriptions; the Synopsis Evaluation Procedure; the Random Sampling Summaries; the Random Sampling Transcriptions; and the Cumulative Hours per Pay Period per Case Template. We asked about the additional forms referenced in their plan, but Conduit officials could not provide any details on the forms or confirm whether they were ever prepared.

In our judgment, Conduit failed to enforce and follow its QA Plan and the DEA also failed to properly review the QA Plan on a regular basis to ensure compliance by Conduit. Therefore, we believe that because the DEA improperly placed full responsibility for QA on Conduit and Conduit failed to comply with their QA Plan, the DEA cannot ensure it is receiving the required level of service, which affects the assurance that the linguist work the DEA received was credible and reliable. We recommend the DEA establish procedures to ensure the COR and TMs review, on a regular basis, Conduit's QA Plan, including any updates or revisions, and ensure that Conduit is completing QA responsibilities in accordance with its plan.

Contractor Performance

We identified significant deficiencies related to insufficient linguist security screening and language proficiency, a lack of proper contract administration and oversight, and a lack of government QA for the contract. We believe these deficiencies could result in contractor performance problems. As discussed throughout this report, the DEA was made aware of similar deficiencies in two prior audit reports on other DEA linguist contracts. **The DEA's failure to** fully address these deficiencies early and its lack of substantive action increases the risk of negative impact on its investigations and, therefore, its ability to properly carry out its important mission.

To assess Conduit's performance under the contract we interviewed DEA personnel with responsibilities related to contract oversight and Conduit personnel, including supervisors and linguists, at each field division. We also surveyed a sample of 50 Case Agents from the Denver and Phoenix Field Divisions who worked with Conduit linguists on their cases to determine how the agents used linguist work and whether they had any concerns with linguist performance. Overall, we found that the Case Agents were generally satisfied with services performed by Conduit; however, we identified an issue related to **Conduit's** ability to meet the contract requirements.

According to the contract, Conduit was required to provide minimum numbers of qualified linguists for four languages: German, Vietnamese, Chinese (Cantonese) and Spanish, at any given time. However, the contract also identified 114 languages as either common or exotic, and noted that the list was not all-inclusive. Conduit was required to provide qualified linguists for these languages

to meet the DEA's requirements, on an as needed basis. For example, the list of languages included Arabic and Serbo-Croatian. Arabic was identified as common and Serbo-Croatian as exotic. According to the contract, Conduit had 15 calendar days to meet the requirement for common or exotic languages.

Contract Requirements

Based on the 34 survey responses, the majority of the Case Agents indicated **they were satisfied with the linguists' performance and the quality of their work.** However, one Case Agent we surveyed from the Phoenix Field Division highlighted that Conduit had difficulties providing enough qualified Arabic linguists to support their need, especially when they needed to have more than one wire surveilled at the same time. The same Case Agent noted that on at least three occasions the DEA had to use other DEA linguist contractors to fulfill the need for additional Arabic linguists. We discussed this with the Phoenix TM who confirmed this happened because Conduit did not have Arabic linguists available and the DEA had to use one of the other linguist contractors to provide the Arabic linguists necessary to support the case. Conduit officials explained that Conduit had at least one Arabic linguist available; however, the linguist did not have a current background investigation. According to the Phoenix TM, SOD handled the funding and task orders to obtain the additional Arabic linguists from other linguist contractors.

Task Orders Issued to Other Linguist Contractors

We requested and the DEA provided the 12 task orders issued in support of the case where, according to the Case Agent, Conduit was unable to provide Arabic linguists. According to Conduit officials, Conduit could not provide the number of favorably adjudicated Arabic linguists needed by the DEA for the field divisions under the contract. As a result, the DEA issued 3 of the 12 task orders to 2 other linguist contractors to fulfill the need for Arabic linguists. We found that the rates for the two other linguist contractors were higher than the rates in **Conduit's** contract. Despite the difference in pricing, the DEA did not provide documentation or support to indicate that the Contracting Officer determined that the other linguist contractors' quoted rates were fair and reasonable. In fact, on one occasion the Contracting Officer and Case Agent expressed concerns over the higher prices. We asked SOD how the Contracting Officer reviewed the quoted rates to determine that the rates were fair and reasonable, but received no response from the Contracting Officer or SOD officials. Thus, we believe the DEA did not ensure that the Contracting Officer adequately reviewed the quoted rates for the task orders or that the Contracting Officer determined that the quoted rates from the two other linguist contractors were fair and reasonable.

Ultimately, we determined the DEA paid \$33,421 more than it would have paid for the linguists under its contract with Conduit; we consider this additional cost to be unreasonable and thus unallowable. Therefore, we recommend the DEA remedy the \$33,421 in unallowable costs the DEA paid to another linguist contractor for Arabic linguists. We also recommend that the DEA ensure the Contracting Officer adequately reviews contractor rates to ensure that the rates are

fair and reasonable for any order issued to another linguist contractor, which could include using GSA **FSS contracts to meet the DEA's needs**.

Usage of FBI Linguist

The Phoenix TM also noted that Conduit was not able to provide Bosnian (a variant of Serbo-Croatian) linguists to support a case. According to Conduit officials, Conduit had a Bosnian linguist available, but the linguist did not have a current background investigation. We asked the Contracting Officer and COR about **Conduit's inability to provide linguists to meet the DEA's requirement for Arabic and Bosnian linguists**, but only received a response from the COR. According to the COR, the need for linguists for languages such as Arabic or Serbo-Croatian are sporadic in nature. As such, the biggest challenge for these type of languages, is maintaining approved linguists who meet the DEA security requirements established under the DEA Security Clause DEA-2852.204-83.²⁹

The COR explained that when the requirement for Bosnian linguists became known, Conduit asked the DEA Linguist Security Team at SOD whether one of its linguists, fluent in Bosnian, was approved to work under the contract.³⁰ However, the DEA Linguist Security Team told Conduit that its linguist did not have a completed background investigation and could not work under the contract. As a result, Conduit had no Bosnian linguists with approved background investigations who could work under the contract; thus, Conduit **could not fulfill the DEA's** requirement for a Bosnian linguist. The COR stated the DEA Linguist Security Team contacted the other DEA linguist contractors to inquire whether they had Bosnian linguists available to work, but they did not. The DEA Linguist Security Team reached out to the FBI to find a linguist fluent in Bosnian to satisfy the DEA requirement. The COR explained the Bosnian linguist was an FBI employee and the DEA and the FBI were in the process of creating a reimbursable agreement where the FBI would provide the linguist to the DEA at no cost, but the DEA would be responsible for paying any overtime for the linguist.³¹

Contracting Officer's Responsibilities

Ultimately, if Conduit is unable to meet the contract requirements, they are **non-compliant with the contract terms and conditions**. According to Conduit's QA Plan, failure to meet performance measures or failure to comply with regulations

²⁹ We previously discussed the effects of the DEA Security Clause DEA-2852.204-83 and its impact on the contract and Conduit in the *Security Requirements for Linguists* section of this report.

³⁰ The Linguist Security Team is comprised of SOD personnel who assist the COR and maintain a centralized database for all languages and tracks the approval status for each linguist working for the DEA. The individuals on the team are not part of DEA Security Programs, which is responsible for enforcing the security requirements under the DEA Security Clause 2850.204-83.

³¹ The DEA did not provide the timeframe for when the Bosnian linguist was needed; according to a Conduit official the timeframe was March 20, through April 18, 2017, and the wire was pending renewal. According to a DEA official, as of May 2017, the DEA and the FBI are still working on the agreement between the two components for linguist services.

may result in contract remedies that could include suspension or termination for cause, reduced payment, or a decision not to exercise contract options. It is the responsibility of the Contracting Officer to enforce the contract requirements and address non-compliance to mitigate any risk that such non-compliance could create for the DEA. In a previous OIG audit report from February 2012 on another DEA linguist contract, the OIG found that the DEA needed to improve the Contracting Officer's monitoring of the contract and recommended that the DEA implement procedures to ensure the Contracting Officer fully monitors the activities of the COR, contract administration and contract performance. We determined that the DEA did not ensure the Contracting Officer followed the procedures detailed in the contract and the DEA Contract Administration Plan for monitoring the contract. It is especially concerning that **the DEA's position** is that the Contracting Officer does not need to be involved if a contractor is unable to meet contract requirements.

We identified at least three instances where Conduit was unable to meet the DEA's contract requirements for languages that were requested on an as-needed basis. We also asked whether **the Contracting Officer was notified of Conduit's** inability to meet the contract requirements, but we received no response from the Contracting Officer. The DEA stated that if a contractor is unable to quickly provide linguists, then it is a fair and reasonable practice to solicit another regional linguist contractor without further action by the Contracting Officer. We disagree. The Contracting Officer has overall responsibility for the contract, including acceptance of services on behalf of the government. If Conduit cannot meet the contract requirements, it is the Contracting Officer's responsibility to determine what corrective action is necessary. Additionally, if the DEA chooses to use another contractor to meet the requirements, the Contracting Officer should be made aware of how those requirements will be satisfied and determine whether Conduit should be required to reimburse the government for the additional costs.

Further, if the DEA believes the requirements, as defined in the contract, are not realistic or achievable by the contractor, then the DEA should determine whether another alternative should be used to obtain linguists for languages that are requested on an as-needed basis, address the issues created by the DEA security requirements, and modify the contract accordingly. Therefore, we recommend the DEA ensure that the TMs notify the Contracting Officer whenever Conduit is unable to satisfy a language requirement and that the Contracting Officer enforce the contract requirements and address any issues of non-compliance, including documenting the non-compliance in CPARS. We also recommend that the DEA determine whether other methods should be used to obtain linguists for languages it requires that are not the main languages required by the contract and develop policies and procedures for obtaining linguists fluent in those languages if contractors are unable to meet language requirements, such as utilizing the NVTC to reduce the risk of the **DEA's requirements** not being met.

Conduit's Scheduling of Linguists

Conduit classified linguists as either employees or independent contractors. Linguists we interviewed explained that Conduit gives preference to their employee

linguists over their independent contractors to work on task orders. Independent contractors only work when needed and Conduit does not guarantee a specific number of hours per week.

We interviewed and surveyed Case Agents from the Denver and Phoenix Field Divisions and found agents encountered issues with Conduit replacing linguists on their cases, sometimes only to ensure that employee linguists were working 40 hours per week. While not every agent had this concern, those that did explained that replacing linguists can create unnecessary risk for their cases. Conduit officials told us that its staffing of linguists is based on multiple factors, including linguist availability, agents requesting reassignments, logistics, activity of new wires, and case activation.

According to a Case Agent, when a new linguist replaces another linguist who had been working on a case, the incoming linguist is not familiar with the details of the case and it creates a learning curve for the new linguist. There is an analytic aspect to linguist work on each case that requires an understanding of the case in the aggregate, which is lost when assigning employees temporarily to a task order. Additionally, the Case Agent highlighted, if a linguist new to the case is unclear about case details, it can cause Case Agents to go to the wrong location or follow the wrong vehicle, impacting the case and work already done. Adding a new linguist introduces unnecessary risk to the case, especially when Case Agents are attempting to conduct time sensitive law enforcement operations. While Conduit explained that replacement of linguists is a last resort, we believe that increased coordination with the DEA and formal **procedures will help fulfill Conduit's goal of minimal disruption to a case.**

Therefore, we recommend the DEA ensure that Conduit consults with the DEA TMs and Case Agents prior to changing linguist assignments, and puts in place procedures to limit these changes as much as possible to prevent disruption to law enforcement investigations and ensure continuity of services.

Service Contract Requirements and Contractor Payments

Service contracts are subject to specific requirements for wage and fringe benefits to ensure that workers are paid fairly. These requirements are defined in the Service Contract Labor Standards (SCLS), formerly known as the Service Contract Act, and U.S. Department of Labor (DOL) Wage Determinations (WDs). Failure to follow this guidance can result in potential underpayment of workers. Additionally, the DOL updates its WDs to reflect changes in the wage and fringe benefit rates and contractors can receive price adjustments to account for these changes. It is important that agencies understand and follow the SCLS and the DOL WD requirements in order to ensure that contract price adjustments are accurate and allowable by a contractor or the government can end up paying more than necessary for the services it needs.

Compliance with Service Contract Labor Standards and Wage Determinations

We reviewed the SCLS and the DOL WD incorporated into the contract to determine whether Conduit complied with SCLS and the DOL WD and whether the DEA approved accurate price adjustments for the contract in accordance with FAR requirements. The SCLS applies to every contract entered into by the federal government where the principal purpose is to furnish services through the use of service employees. 29 C.F.R. § 4.150 states the SCLS provisions apply generally to all service employees performing work on a covered contract entered into with the federal government.

The DOL Wage and Hour Division issues SCLS WDs, which establish the minimum wages and fringe benefits a service contractor must pay its employees performing work on covered contracts. The DOL revises the WDs on occasion to reflect the current prevailing wage and fringe benefit rates. The most current DOL WD is incorporated into new contracts and revised DOL WDs are incorporated into existing contracts when options are exercised. The **DEA’s** contract with Conduit for linguist services was subject to the SCLS and incorporated the DOL WD Number 2012-0012, which established the minimum wage rate and fringe benefits Conduit was required to pay linguists who worked under the contract. The DOL WD identified specific wage rates for 10 regions in the U.S. and standard fringe benefits for all linguists regardless of the region in which they worked. Table 1 below shows the hourly wage for the mountain region and fringe benefit rates Conduit was required to provide to linguists working under the contract.

Table 1
DOL WD Number 2012-0012

| WD Number 2012 0012 Revisions | Hourly Wage Rate | Hourly Fringe Benefit Rate |
|-------------------------------------|---------------------|-------------------------------|
| Revision 1 | 28.08 | 3.59 |
| Revision 2 | 28.08 | 3.71 |
| Revision 3 | 28.08 | 3.81 |
| Revision 4 | 28.08 | 4.02 |
| Revision 6 | 28.08 | 4.27 |
| Revision 8 | 28.81 | 4.27 |

^a DEA did not incorporate Revision 5 and 7 in the contract because Revision 6 and 8 were issued prior to the next option year being exercised.

Source: DOL

According to 29 C.F.R. § 4.6 (k)(1), the term “service employee” includes all persons, regardless of any contractual relationship, engaged in the performance of a contract other than persons employed in a bona fide executive, administrative, or professional capacity as defined in 29 C.F.R. § 541. Further, 29 C.F.R. § 4.155 states that a **person’s status as an independent contractor** is immaterial in

determining coverage under the SCLS. Thus, Conduit was required to pay wages and provide fringe benefits (including holidays and vacation) in the amounts identified in the DOL WD Number 2012-0012 to all individuals working as analytic linguists under the contract, regardless of their classification.

Linguist Vacation and Holiday Pay

Conduit provides employee linguists fringe benefits, including holidays and vacation, but we found that the fringe benefits did not meet the requirements of DOL WD Number 2012-0012. According to the WD, Conduit was required to provide linguists 2 weeks paid vacation after they worked for Conduit for 1 year, 3 weeks after 5 years, and 4 weeks after 15 years. Conduit was also required to provide a minimum of 10 paid holidays per year. However, we found that for employee linguists, **Conduit's policy did not address paid vacation for employees with over 15 years.** In addition, we found that, to receive a paid holiday, Conduit required employee linguists to work 32 hours during the week of the holiday, as well as work the day prior to and the day after a paid holiday. 29 C.F.R. § 4.174 states that unless specified otherwise in a DOL WD, an employee who performs any work during the workweek in which a named holiday occurs is entitled to the paid holiday. The paid holiday cannot be denied because the employee did not work the day before or the day after the holiday, unless such qualifications are specifically included in the DOL WD.

Further, Conduit's independent contractor linguists do not earn any vacation, which is not in compliance with DOL WD Number 2012-0012. Additionally, independent contractors were only paid for holidays at 1.5 times the wage rate if they worked the holiday, rather than 2 times the wage rate or another day off, as required. According to 29 C.F.R. § 4.174, an employee who is eligible to receive payment for a holiday must receive the appropriate amount of pay up to 8 hours. If the independent contractor worked on the holiday, in addition to the amount the linguist is ordinarily entitled to, they should receive the cash equivalent of a full **day's pay or be furnished** with another day off with pay. As a result, we believe that Conduit failed to properly provide full fringe benefits to 233 independent contractor linguists and potentially to 257 employee linguists in accordance with the DOL WD Number 2012-0012 and the SCLS.³²

Conduit Employee Records

We also found concerns related to employee records maintained by Conduit. 29 C.F.R. § 4.6 (g)(1) states that contractors performing work subject to the SCLS shall keep and maintain records containing information for each employee subject to the SCLS. The required information included the correct work classification, rate of wages paid and fringe benefits provided, rate of fringe benefit payments in lieu thereof, and total daily and weekly compensation of each employee. Conduit did not provide us with a complete and accurate list of all the linguists who worked

³² Conduit could not readily provide an accurate list of linguists who worked under the contract; thus, we used information provided by the DEA to calculate these numbers.

under the contract. Conduit officials explained that a list of linguists who worked under the contract was not readily available and developing a list would be very labor intensive. As an alternative, we used data obtained from the DEA as the basis of our identification of employees and independent contractors that worked under the contract.³³ However, this data did not include the other information Conduit was required to record and maintain, such as the worker classification, wage and fringe benefit rate paid, total daily and weekly compensation, and daily and weekly hours worked by each linguist, which is necessary to properly determine what linguists are actually being paid and the benefits they receive.³⁴

According to the DOL, violations of the SCLS may result in the withholding of contract payments in sufficient amounts to cover wage or fringe benefits underpayments, contract termination, and debarment from future contracts for up to 3 years. We referred these matters to the DOL Wage and Hour Division for further review and potential action. Therefore, we recommend the DEA ensure Conduit works with the DOL to calculate the fringe benefits Conduit should have paid to linguists in accordance with the SCLS and DOL WD Number 2012-0012 and ensure that Conduit pays those benefits to the affected linguists who worked under the contract.

The DEA also awarded contract number DJD-13-C-0003 to Conduit for regional linguist services for the northwest coast region. Thus, we recommend the DEA ensure Conduit work with the DOL to ensure it properly paid fringe benefits to linguists who worked on contract number DJD-13-C-0003. We also recommend the DEA ensure Conduit keep adequate records in compliance with 29 C.F.R. § 4.6 (g)(1) and work with Conduit to verify the correct total of employees linguists and independent contractor linguists who worked under the contract.

Task Orders

Under the contract, the DEA paid Conduit a fixed billing rate per hour for linguist services based on language and location.³⁵ This fixed billing rate included all costs associated with contract performance, including wages, overhead, general and administrative expenses (G&A), and profit. The DEA SOD issued task orders for the required languages needed for Title III wires under the Denver or Phoenix Field Division. We reviewed a sample of 15 task orders, totaling \$608,848, out of a

³³ We did not test the reliability of the data the DEA provided as part of our audit.

³⁴ Conduit provided data for all of its linguists in response to our data request. However, Conduit could not identify which linguists worked under contract number DJD-13-C-0004.

³⁵ FAR 16.601(2)(1) specifies that agencies using time and materials contracts shall specify in the contract separate fixed hourly rates that include wages, overhead, G&A and profit for each labor category; in this report we refer to **the contract's** fixed hourly rates as fixed billing rates.

total 1,977 task orders issued under the contract, which totaled approximately \$31 million as of September 27, 2016.³⁶

For each task order in our sample, we reviewed the requisition form from the field division requesting the timeframe, languages, number of linguist hours, and amount of funding needed for the linguist work on the wire; the task order and any modifications; the invoices; and closeout documentation to de-obligate any unused funds.³⁷ We reviewed the invoices for each task order to determine whether Conduit prepared the invoices correctly and the invoices were supported by **timesheets or printouts from Conduit's** timekeeping system.³⁸ Other than the issues relating to the incidental travel costs discussed earlier in the report and **problems with the calculations of Conduit's fixed billing rates which we discuss in** the following section, we found that Conduit generally prepared invoices correctly and the invoices were supported by timesheets or other documentation.

Conduit's Billing Rates

The contract is a time and materials contract. FAR 16.601(2)(i) requires time and materials contracts to specify fixed billing rates that include wages, overhead, G&A, and **profit for each category of labor. Conduit's labor hour rates for linguists were the main component of Conduit's** calculation of its fixed billing rates for each contract item for regular or overtime hours.

We **found Conduit's labor hour rate calculations used** _____ hours, which included 10 holidays and 10 vacation days per year, to calculate the direct labor cost for linguists. However, as previously explained, Conduit did not always pay its employee linguists for 10 holidays and the number of vacation days varied per linguist because it was based on years worked. For independent contractor linguists, Conduit did not pay any vacation or holidays (unless worked). See **Table 2 for Conduit's labor hour rate calculation** for the Spanish Linguist contract item for the base year of the contract.

³⁶ While the DEA issued over 1,900 task orders, as of September 27, 2016, the amount of the average task order for contract number DJD-13-C-0004 was approximately \$15,400 and the task order amounts varied from \$348 to over \$100,000. For our sample, we selected task orders with high and low dollar amounts.

³⁷ Title III wires are valid for only 30 days, but can be renewed if necessary upon approval by the court. Thus, the period of performance for the majority of task orders was 30 days.

³⁸ Conduit submitted invoices in 2 week increments during the 30 day timeframe for each task order. The task orders we reviewed had two or three invoices per task order.

Table 2

**Conduit’s Labor Hour Rate for the
Denver Spanish Linguist Contract Item**

| | |
|---|------------|
| Wage Rate | ██████████ |
| Hours | ██████████ |
| Total Wages | ██████████ |
| Fringe Rate | ██████████ |
| Total Fringe | ██████████ |
| Wages + Fringe | ██████████ |
| Taxes | ██████████ |
| Total (Wages+Fringe+Taxes) | ██████████ |
| Labor Hour Rate ^a (Total/██████████Hours) | ██████████ |

^a Conduit bills the DEA only for linguist hours worked and not for non-productive hours (i.e., holiday and vacation time). Conduit estimates ██████████ total direct hours for each linguist in a year.

Source: Conduit

Conduit’s labor hour rate calculation applied payroll taxes to the total amount of wages and fringe benefit costs paid for linguists. However, only independent contractor linguists received cash payouts for their fringe benefits. According to Conduit officials, fringe benefits for employee linguists are paid to a third party for health insurance. According to the Internal Revenue Service Publication 15B, employer paid health insurance for employees is not considered wages and is exempt from federal withholding, social security and Medicare, and federal unemployment taxes. Thus, we question whether it is appropriate to apply payroll taxes to health insurance payments for employee linguists.

Table 3 below, shows that Conduit calculated a separate labor hour rate for linguists, case leaders, site supervisors, and the Regional Program Manager. Conduit multiplied these labor hour rates by the estimated total hours it expected to determine its total labor cost. Conduit applied a percentage to the total labor cost to calculate applicable G&A; applied a separate percentage to calculate profit; and then divided the sum of its labor costs, G&A, and profit amounts to determine its fixed billing rates.³⁹ These calculations are shown in Table 3.

³⁹ The contract specifically stated that fixed billing rates were to include wages (including apportioned supervisory and management labor), overhead, G&A, and profit. According to Conduit officials, Conduit used a combined overhead pool, which is reflected as G&A in its billing rate calculations.

Table 3

Conduit's Fixed Billing Rate Calculation for the Denver Spanish Linguist Contract Item for the Base Year

| Labor Category | Percentage | Estimated Hours ^a | Labor Hour Rate | Totals ^b |
|--|------------|------------------------------|-----------------|---------------------|
| Linguist Wages | | ██████ | ██████ | ██████ |
| Apportioned Case Leader Wages | | ██████ | ██████ | ██████ |
| Apportioned Site Supervisor Wages | | ██████ | ██████ | ██████ |
| Apportioned Regional Program Manager Wages | | ████ | ██████ | ██████ |
| Total Labor | | | | ██████ |
| G&A | ██████ | | | ██████ |
| Subtotal | | | | ██████ |
| Profit | ██████ | | | ██████ |
| Total Cost | | | | ██████ |
| Fixed Billing Rate | | ██████ | | ██████ |

^a Conduit used its own historical data to calculate the number of estimated hours it used in its fixed billing rate calculations.

^b Differences in totals are due to rounding.

Source: DEA, Conduit

The contract included 14 contract items, therefore, Conduit used this same methodology to calculate its fixed billing rates for 12 contract items, the other 2 contract items were for travel and the DEA estimated the amounts for those items.⁴⁰ **Conduit's** calculated fixed billing rates were the rates the DEA incorporated into the contract for each contract item and were the rates Conduit used to bill the DEA for linguist hours worked on each task order.

We determined **Conduit's** fixed billing rates were inflated because Conduit inappropriately calculated its labor hour rates using a total of ██████ hours, which, as we previously explained, included holiday and vacation hours that Conduit did not pay to all of its linguists. Conduit also included apportioned supervisory and management labor costs in its fixed billing rates for each contract item, except for those for travel. According to Conduit, the Regional Program Manager was responsible for overseeing administrative duties for the Phoenix and Denver Field Divisions and acting as the Operations Manager. However, as mentioned earlier in this report, the Regional Program Manager left after almost 2 years and Conduit never identified another Regional Program Manager nor notified the DEA of this

⁴⁰ The contract included 14 contract items: Denver Spanish Linguist, Denver Overtime Spanish Linguist, Denver Common Languages, Denver Overtime Common Languages, Denver Exotic Languages, Denver Overtime Exotic Languages, Denver Travel, Phoenix Spanish Linguists, Phoenix Overtime Spanish Linguist, Phoenix Common Languages, Phoenix Overtime Common Languages, Phoenix Exotic Languages, Phoenix Overtime Exotic Languages, and Phoenix Travel. All contract items except for the travel had a specific fixed hourly rate.

change. According to Conduit officials, Conduit divided the responsibilities of the Regional Program Manager amongst existing management employees. We were never provided evidence to demonstrate that the responsibilities of the Regional Program Manager position were being completed. Nevertheless, Conduit continued to apply a portion of the labor costs for the Regional Program Manager to its fixed billing rate calculations even though the position was not filled for 3 out of 5 years of the contract.

Overall, we determined that Conduit incorrectly calculated its labor hour rates and, as a result, the fixed billing rates that were based on those labor hour rates. Conduit used the incorrect fixed billing rates to bill the DEA for linguist hours worked under the contract. Thus, we recommend the DEA work with Conduit to review its fixed billing rate calculations and ensure its calculations are accurate. We also recommend that the DEA ensure that Conduit notifies the DEA of staffing changes that affect management and quality control of the contract.

Contract Price Adjustments

As previously explained, the DOL revises the WDs on occasion to reflect the prevailing wage and fringe benefit rates. Revised DOL WDs are incorporated into existing contracts when options are exercised through price adjustments. Under FAR 52.222.43, *Fair Labor Standards Act and Service Contract Labor Standards Price Adjustment (Multiple Year and Option Contracts)*, price adjustments must be the result of increased costs caused by a **contractor's compliance with the revised DOL WD**, and not due to other factors. FAR 52.222-43(d) also states that fixed billing rates will be adjusted **to reflect the contractor's actual increase in applicable wage and fringe benefits** to the extent that the increase is made to comply with a DOL WD revision. FAR 52.222-43(e) further states that any adjustment will be limited to increases in wages and fringe benefits and the accompanying increases in **social security and unemployment taxes and workers' compensation insurance**. The adjustment should not otherwise include any amount for general and administrative costs, overhead, or profit.

Since Conduit's contract is a time and materials contract, its fixed billing rates included wages, fringe benefits, G&A, and profit. Thus, consideration by Conduit must be taken when calculating price adjustments for time and materials contracts, to separate the components of the fixed billing rates for which an adjustment is allowed, such as wages and fringe benefits, from those for which it is not, such as the general and administrative expenses, overhead, and profit.

For the five price adjustments Conduit requested and the DEA incorporated into the contract, Conduit adjusted the labor hour rates in its fixed billing rate calculations to match the wage and fringe benefit rate identified in the revisions to DOL WD Number 2012-0012. Table 4 shows the differences between each of the six DOL WD Number 2012-0012 revisions for linguist wage and fringe benefit rates that Conduit was entitled to receive through a price adjustment.

Table 4
WD Number 2012-0012 Revisions

| Revision Number | Hourly Wage Rate | Difference Between Old and New Rate | Hourly Fringe Benefit Rate | Difference Between Old and New Rate |
|-----------------|------------------|-------------------------------------|----------------------------|-------------------------------------|
| 1 | \$28.08 | | 3.59 | |
| 2 | 28.08 | - | 3.71 | \$0.12 |
| 3 | 28.08 | - | 3.81 | 0.10 |
| 4 | 28.08 | - | 4.02 | 0.21 |
| 6 | 28.08 | - | 4.27 | 0.25 |
| 8 | 28.81 | \$0.73 | 4.27 | - |

Source: DEA, DOL

In its fixed billing rate calculations, Conduit applied its G&A and profit as a percentage of total labor as shown in Table 3. When updating its fixed billing rates to incorporate the revised wage or fringe benefit rates, Conduit reapplied the original percentage of G&A and profit to a higher dollar value of labor costs, as shown in Table 5. This increased the fixed costs for G&A and profit amounts included in its fixed billing rates. Ultimately, the result was updated fixed billing rates that included unallowable increases to G&A and profit.

Table 5 shows Conduit's fixed billing rate calculations for DOL WD Number 2012-0012 Revisions 2 and 3, for the Denver Spanish Linguist contract item.⁴¹

⁴¹ DOL WD Number 2012-0012 Revision 1 was the DOL WD the DEA incorporated into contract number DJD-13-C-0004 when DEA awarded the contract. DEA incorporated DOL WD Number 2012-0012 Revision 2 in a modification to the contract in December 2012; incorporated Revision 3 when exercising Option Year 1; incorporated Revision 4 when exercising Option Year 2; incorporated Revision 6 when exercising Option Year 3; and incorporated Revision 8 when exercising Option Year 4.

Table 5
 Conduit's Fixed Billing Rate Calculations for the
 Denver Spanish Linguist Contract Item for
 DOL WD Number 2012-0012 Revisions 2 and 3

| Labor Category | Percentage | Estimated Hours ^a | WD Rev 2 Totals ^b | WD Rev 3 Totals ^b |
|---------------------------|------------|------------------------------|------------------------------|------------------------------|
| Total Labor | | | ██████ | ██████ |
| G&A | ██████ | | ██████ | ██████ |
| Subtotal | | | ██████ | ██████ |
| Profit | ██████ | | ██████ | ██████ |
| Total Cost | | | ██████ | ██████ |
| Fixed Billing Rate | | ██████ | ██████ | ██████ |

^a Conduit used its own historical data to calculate the number of estimated hours it used in its fixed billing rate calculations.

^b Differences in totals are due to rounding.

Source: DEA, Conduit

Using the DOL WD rates shown in Table 1, we calculated the difference between the increases in Conduit's fixed billing rate for the contract items for regular and overtime hours for each price adjustment Conduit received and the DEA incorporated into the contract. See Table 6 below for Conduit's fixed billing rates for each contract year and the differences we identified between the previous and new rates.

Table 6
Conduit's Fixed Billing Rates with
 Approved Price Adjustments

| Contract Item | Base Yr. (Rev 1) | Base Yr. (Rev 2) | Option Yr. 1 (Rev 3) | Option Yr. 2 (Rev 4) | Option Yr. 3 (Rev 6) | Option Yr. 4 (Rev 8) |
|-----------------------------|------------------|------------------|----------------------|----------------------|----------------------|----------------------|
| DEN Spanish | ████ | ████ | ████ | ████ | ████ | ████ |
| DEN OT ^a Spanish | ████ | ████ | █ | ████ | █ | ████ |
| DEN Common | ████ | ████ | ████ | ████ | ████ | ████ |
| DEN OT Common | ████ | ████ | █ | ████ | █ | ████ |
| DEN Exotic | ████ | ████ | ████ | ████ | ████ | ████ |
| DEN OT Exotic | ████ | ████ | █ | ████ | █ | ████ |
| PHX Spanish | ████ | ████ | ████ | ████ | ████ | ████ |
| PHX OT ^b Spanish | ████ | ████ | █ | ████ | █ | ████ |
| PHX Common | ████ | ████ | ████ | ████ | ████ | ████ |
| PHX OT Common | ████ | ████ | █ | ████ | █ | ████ |
| PHX Exotic | ████ | ████ | ████ | ████ | ████ | ████ |
| PHX OT Exotic | ████ | ████ | █ | ████ | █ | ████ |

^a Denver Overtime (DEN OT).

^b Phoenix Overtime (PHX OT).

Source: DEA

We found the price adjustments Conduit requested, and the DEA incorporated into the contract, exceeded the allowable increases for wages or fringe **benefits in the WD revisions. This is attributable to Conduit's method of** recalculating its updated fixed billing rates, which included unallowable increases to G&A and profit. We believe this also translated into fixed billing rates that were inflated from the inclusion of the Regional Program Manager position because Conduit never identified another individual as the Regional Program Manager after the original individual left and Conduit did not provide documentation to support the Regional Program Manager QA responsibilities were actually being completed, which we discussed earlier in this report. The rates became further inflated each time an option was exercised that incorporated any revision to wages or fringe benefits from the WD. **Conduit's calculations** for each price adjustment updated the wage or fringe benefit rate to match the WD revision, but Conduit never adjusted its labor hour rate to reflect the difference between how it actually paid its independent contractor and employee linguists for fringe benefits. Therefore, we determined that DEA Contracting Officials did not properly review **Conduit's price adjustment**

requests because each price adjustment included these unallowable increases to G&A and profit, but were nonetheless approved by the DEA.

Additionally, as shown in Table 6, the contract included six items for overtime hours. Overtime premiums are not required under the SCLS. While all hours worked on the contract were subject to price adjustments for changes in wages due to WD revisions, such adjustments should not include the overtime premium of additional half time for the hours over 40 per week. We found for one of the five price adjustments, when Conduit incorporated the WD revision to increase wages it also improperly adjusted the overtime premium for the six contract items. Again, **DEA Contracting Officials approved Conduit's** price adjustment without proper review to identify this non-compliance.

Support for Price Adjustments

In addition to the unallowable increases to G&A and profit, FAR 52.222-43(g) states that the Contracting Officer shall have access to the necessary documentation from the contractor to support **the contractor's** request for a price adjustment. The types of documentation useful when reviewing a price adjustment request include: actual wage records, documents supporting accompanying costs (such as payroll taxes and workers compensation costs), and documents supporting fringe benefit costs. Again, cash payouts for fringe benefits are subject to the various payroll taxes. However, employer payments to fringe benefit plans are not subject to payroll taxes. Thus, documentation to support the allowability of any accompanying payroll taxes for fringe benefit increases is essential.

We found that **DEA Contracting Officials only reviewed Conduit's adjusted** fixed billing rate calculations. Conduit did not provide, and the DEA did not request, relevant data such as payroll or fringe benefits payout information, which is critical for the DEA to validate and verify whether Conduit should have received **the price adjustment**. **Conduit's** request for a price adjustment also did not identify the breakdown of employee linguists and independent contractor linguists paid under the contract. Since independent contractor linguists receive their fringe benefits as a cash payout, this impacts the amount of payroll taxes Conduit could include in their price adjustment. As a result, we could not calculate the correct price adjustment amount Conduit should have received or the dollar value of the overpayment.

Given the numerous concerns we identified related to the price adjustments for the contract, we recommend the DEA work with Conduit to determine the proper price adjustments Conduit should have received, remedy any excess costs paid to Conduit for improperly approved increases to G&A and profit, and ensure Conduit consults with the DOL on the payment of health insurance benefits to its linguists and the related payroll taxes associated with such benefits. We also recommend the DEA ensure that Conduit submit the necessary documentation to support requests for price adjustments.

Adjustments to Contract Ceiling

When the DEA modified the contract to incorporate new fixed billing rates with the price adjustments, the contract ceiling was also raised. According to FAR 16.601(e), prior to an increase in the ceiling price of a time and materials contract, the Contracting Officer shall conduct an analysis of pricing and other relevant factors to determine if the action is in the best interest of the government and document the decision in the contract file. We found DEA Contract Specialists completed the memorandum to increase the ceiling price and included them in the contract file. However, the memorandum did not address how the DEA determined that the increase Conduit proposed was accurate, and that the increases approved were only for wages or fringe benefits and applicable accompanying costs. Therefore, we recommend the DEA ensure the memorandum to the file for the price **adjustments includes the Contracting Officer's methodology** for determining how a price adjustment is accurate and valid, and in accordance with the DOL WD and the FAR.

Guidance for the Administration of Service Contracts

We determined that the DEA does not have any guidance on how to administer service contracts or review price adjustments for applicable service contracts and does not provide any training to its contracting personnel on this topic. The Wage Determinations OnLine website includes a Price Adjustment Calculation Tool (PACT).⁴² The PACT is an automated method of accurately calculating price adjustments, specifically designed to streamline the price adjustment process and timeline. The website includes a PACT User Guide that includes sections on government and contractor use of the tool. While usage of the PACT is not required and is generally not suitable for time and material contracts with fixed billing rates; the principles laid out in the guide are still applicable regardless of whether the tool is used.

Additionally, the PACT User Guide provides specific guidance for compliance with the SCLS and price adjustments. The guidance includes a Department of Navy Desk Guide for Service Contract Price Adjustments (Desk Guide). The Desk Guide includes interpretation, guidance, and examples of how to properly calculate price adjustments under the FAR 52.222-43 clause. While the DEA is not required to use the PACT or follow the Desk Guide, we believe the principles included for SCLS price adjustments may be useful to DEA personnel responsible for analyzing price adjustments.

Thus, we recommend the DEA review the PACT User Guide and Department of Navy Desk Guide for Service Contract Price Adjustments to identify best practices and use them to develop DEA-specific guidance for use by contracting officials

⁴² The Wage Determinations OnLine website is a collaborative effort of the Office of Management and Budget, DOL, Department of Defense, GSA, Department of Energy, and Department of Commerce.

administering DEA service contracts, including reviewing and approving price adjustments.

Addressing SCLS Compliance Department-Wide

In our judgment, the complexity of SCLS price adjustments significantly increases the importance of good guidance and understanding of the SCLS and its principles. We found that the DOJ does not have its own guidance for components with responsibility for SCLS contracting activities to ensure compliance with applicable rules, regulations, and guidelines. Further, over the last 3 years the OIG has completed audits of four other DOJ service contracts that the Federal Bureau of Prisons and the U.S. Marshals Service awarded to either operate detention or correctional centers or to provide dental assistants at a Federal Correctional Complex. In these reports, the OIG found that the contractors or the components failed to comply with the SCLS.⁴³ While not required, we believe that developing guidance on resources and training could prevent further non-compliance related to the SCLS and improve compliance with the SCLS on service contracts Department-wide.

Therefore, we recommend the Justice Management Division develop guidance on resources and training available to ensure compliance and accurate enforcement of the SCLS on DOJ service contracts.⁴⁴

Definition of Contract Requirements

Contract requirements define the products or services a contractor is responsible for providing to the government in accordance with the terms and conditions of the contract. The lack of well-defined requirements can lead to problems with contract administration and oversight, result in contractor performance problems, and increase the risk that the government will receive services that do not meet the needs of the government and could result in the government paying more for a lesser quality of service.

⁴³ U.S. Department of Justice Office of the Inspector General, *Audit of the Federal Bureau of Prisons Contract No. DJB1PC007 Awarded to Reeves County, Texas to Operate the Reeves County Detention Center I/II Pecos, Texas*, Audit Report 15-15 (April 2015), U.S. Department of Justice Office of the Inspector General, *Audit of the Federal Bureau of Prison's Contract with CoreCivic, Inc., to Operate the Adams County Correctional Center in Natchez, Mississippi*, Audit Report 17-08 (December 2016), U.S. Department of Justice Office of the Inspector General, *Audit of the Federal Bureau of Federal Prisons' Contract No. DJBP0616BPA12004 Awarded to Spectrum Services Group Inc., Victorville, California*, Audit Report 17-20 (March 2017), and U.S. Department of Justice Office of the Inspector General, *Audit of the United States Marshals Service Contract No. DJJODT7C0002 with CoreCivic, Inc., to Operate the Leavenworth Detention Center, Leavenworth, Kansas*, Audit Report 17-22 (April 2017).

⁴⁴ The Justice Management Division provides senior management officials with advice relating to basic DOJ policy for budget and financial management; personnel management and training; procurement; ethics; equal employment opportunity; information processing; telecommunications; security; and all matters pertaining to organization, management, and administration.

FAR Part 37, *Service Contracting*, states that agency officials are responsible for accurately describing the need to be filled through service contracting that ensures full understanding and responsive performance by contractors. For this contract, the DEA used historical costs to estimate a total contract cost of over \$39 million. However, the DEA awarded the contract with a contract ceiling of nearly \$133 million that was later increased to approximately \$135 million. The DEA offered no explanation for why such a high ceiling was necessary. As of April 2017, the DEA had only obligated nearly \$35 million and the contract was scheduled to end in October 2017.

We believe the primary factor affecting the contract need was the estimated quantity of hours, which resulted in an unrealistic and inflated number of required linguists, per language, for the 11 locations identified in the contract. Table 7 shows the DEA's estimated quantity of hours for each contract item per division for the base year of the contract.

Table 7
Estimated Quantity of Hours per Contract Item
for the Base Year of the Contract

| Contract Item | Supplies/Services | Estimated Quantity |
|------------------------|---------------------------|--------------------|
| Denver Field Division | | |
| 0001 | Spanish Linguist | 307,200 Hours |
| 0002 | Overtime Spanish | 15,360 Hours |
| 0003 | Common Languages | 23,040 Hours |
| 0004 | Overtime Common Languages | 1,152 Hours |
| 0005 | Exotic Languages | 23,040 Hours |
| 0006 | Overtime Exotic Languages | 1,152 Hours |
| 0007 | Travel | As Needed |
| Phoenix Field Division | | |
| 0008 | Spanish Linguist | 153,600 Hours |
| 0009 | Overtime Spanish Linguist | 7,680 Hours |
| 0010 | Common Languages | 23,040 Hours |
| 0011 | Overtime Common Languages | 1,152 Hours |
| 0012 | Exotic Languages | 23,040 Hours |
| 0013 | Overtime Exotic Languages | 1,152 Hours |
| 0014 | Travel | As Needed |

Source: DEA contract number DJD-13-C-0004

According to the DEA, the estimated quantity of hours identified in the solicitation and the contract were the maximum number of hours per language that the DEA could order. However, the estimated quantities were not what the DEA calculated it would actually need. In response to the solicitation, interested contractors requested clarification whether the DEA's estimated quantity of hours was an accurate portrayal of actual hours that would be utilized per field divisions, but the DEA did not provide any further explanation for the hours identified.

The estimated amount of hours identified in Table 7 resulted in an unrealistic and inflated number of linguists per location in the contract. Table 8 shows the minimum number of linguists required for the four main languages per location in the contract. Conduit was required to have these linguists available at any given time.

Table 8
Minimum Required Linguists Per Location

| | Language ^a | Estimated Number of Linguists | Travel Authorized |
|-------------------------------|-----------------------|-------------------------------|-------------------|
| Denver Field Division | | | |
| | German | 5 | No |
| | Vietnamese | 5 | No |
| | Chinese (Cantonese) | 5 | No |
| Salt Lake City Office | Spanish | 40 | No |
| Colorado Springs Office | Spanish | 40 | No |
| Grand Junction Office | Spanish | 20 | No |
| Cheyenne Office | Spanish | 25 | No |
| Casper Post of Duty | Spanish | 25 | No |
| Billings Office | Spanish | 20 | No |
| Centennial Office | Spanish | 75 | No |
| Larimer/Weld Offices | Spanish | 20 | No |
| Phoenix Field Division | | | |
| Phoenix Field Division Office | Spanish | 150 | No |
| Tucson Office | Spanish | 80 | No |
| Yuma Office | Spanish | 50 | No |

^a The contract did not identify a specific location for the number of German, Vietnamese, and Chinese linguists; only that the requirement was under the Denver Field Division.

Source: DEA contract number DJD-13-C-0004

Table 8 above also shows that travel was not authorized for linguists, unless the number of linguists the DEA required substantially exceeded the minimum number listed in Table 8 and the DEA deemed that travel costs were necessary for those linguists. Historically, the DEA has paid significant travel costs for the linguists it required. However, for this contract the DEA changed its procurement strategy for linguist services to reduce the amount of travel costs it pays for linguists. Despite this change, the DEA included \$500,000 for travel for each division, for each year of the contract, totaling \$5 million. During the contract award process, interested linguist contractors questioned the high travel amount, but the DEA only replied that the amount was the **"not to exceed" amount** and would be used on an as needed basis. We found that the DEA has paid nominal travel costs for the contract and the number of linguists the DEA required under the task orders for this contract never exceeded the minimum required number of linguists listed per language per location identified in Table 8.

We also found that the Larimer and Weld locations identified in Table 8 were small offices that did not have a wire room or did not have a consistent need for Title III wires. However, the DEA included a requirement for a minimum number of linguists for those offices to be available at any given time. As a result, the minimum number of linguists required for these locations has challenged Conduit's ability to keep linguists actively working at those locations. This issue has been exacerbated by the difficulties related to obtaining background investigations, which we discussed previously.

For example, Conduit officials highlighted the Grand Junction office, which had a minimum requirement of 20 linguists. Because there is not a consistent need for Title III wires in Grand Junction, there is a higher probability of lapses of employment for linguists. Conduit has had to continuously find linguists with completed background investigations to meet the staffing requirement when the office has an active wire. Additionally, Conduit is not allowed to charge travel costs to DEA for bringing linguists from other locations to work. In one instance, Conduit officials explained that even though they had linguists who were active and ready to work in Grand Junction, a DEA official at that office wanted more experienced linguists. Because the number of linguists needed did not exceed the 20 linguists identified in the contract, Conduit had to provide more experienced linguists from Denver **to satisfy the DEA's request and** travel costs for those linguists were not reimbursed by the DEA.

The DEA stated in its response to the MAM that through this contract, the DEA intended to obtain and require that the contractor maintain a regional pool of **qualified linguists that could respond at a moment's notice to government** requirements at the rates specified in the contract. Further, the DEA explained that the solicitation required contractors to propose labor rates that included all indirect **costs, estimated travel, and profit in order to reduce or eliminate the government's** administrative responsibility for processing excessive numbers of travel vouchers. In its response, the DEA acknowledged that, in practice, the nature of the business has not readily lent itself to maintain such pre-priced linguist pools, which has been a challenge for the contractor as well as the government. As a result, the DEA explained in its response that, for the new follow-on regional linguist contracts, the Contracting Officer will require field divisions to provide sufficient rationale for **DEA's development of** the independent government estimate. Additionally, the DEA stated that it is resolved to collaborate with stakeholders to design effective procedures to address our concerns.

While it appears the DEA has acknowledged that there are challenges related **to the pricing of this contract, we do not believe DEA's response adequately** addressed our concerns. In its **response, the DEA explained that the OIG's MAM** was focused on administrative inputs to the contract and the need for linguist services was demonstrated when the final product effectively enabled Case Agents to build solid investigative cases. We consider compliance with the FAR and contract requirements to be more than just administrative details. We agree that the final service provided by the contractor is important. However, it is the FAR

and the contract requirements that define and identify how a contractor is expected to perform in order to ensure that the final service meets the needs of the DEA and provides assurance to taxpayers that the government has received the services it has paid for. Without a proper methodology for determining requirements and proper enforcement of those requirements, it creates undue challenges to contractors when developing pricing for contracts and ultimately increases the risk that the government will receive lower quality services. As stated in FAR 37.102(e), agency officials are responsible for accurately describing the need to be filled through service contracting that ensures full understanding and responsive performance by the contractor. Responsive performance is not limited to the end service performed but to the full performance of all contract requirements. Overall, the DEA did not provide any procedures or the methodology it intends to use to determine the contract need for the upcoming solicitation and beyond.

As a result, we recommend the DEA develop a methodology and procedures for solicitation development that accurately describes the need to be filled through service contracting. This may include a review of the contract terms for each location to determine whether: (1) the minimum linguist numbers are accurate, (2) the minimum linguist numbers reflect the actual need of the locations, (3) the contract terms should allow for reimbursement of travel costs for certain situations, and (4) there is a more efficient method to provide linguist services to smaller locations.

CONCLUSION AND RECOMMENDATIONS

Despite repeated findings and recommendations from prior OIG reports on the DEA's linguist contracts, we concluded that the DEA failed to provide sufficient contract administration and oversight of its contract with Conduit for linguist services. This failure resulted in significant non-compliance with the contract terms and conditions and the SCLS, a lack of QA, and performance issues, which may negatively impact the DEA's drug investigations and, therefore, its ability to properly carry out its important mission to bring to justice individuals and organizations involved in the manufacture or distribution of controlled substances destined for or in the United States.

Of particular concern, the DEA relied on Conduit to perform all QA for the contract, but Conduit could not provide documentation to assure that the services it provided met the contract requirements or its own quality standards. The lack of QA by the DEA and Conduit not only increases the risk to the DEA's drug investigations that rely on the linguist work, but provides no assurance that the services the DEA paid for satisfied the requirements as defined under the contract. We also found that the DEA paid \$33,421 more to another linguist contractor for Arabic linguists than it would have paid under its contract with Conduit. Further, while Conduit's performance under the contract was generally satisfactory, we determined that Conduit on occasion replaced linguists on DEA cases. According to Conduit, its staffing of linguists is based on multiple factors, including linguist availability, agents requesting reassignments, logistics, activity of new wires, and case activation.

Both the DEA and Conduit were not familiar with the SCLS. As a result, the DEA approved and paid inaccurate price adjustments for the contract and Conduit failed to provide some of its linguists with the correct fringe benefits identified in the DOL WD. Further, failure to comply with the SCLS or a DOL WD is not limited to the DEA — over the last 3 years the OIG has found similar concerns in four audit reports on DOJ service contracts awarded by the Federal Bureau of Prisons or the U.S. Marshals Service.

Ultimately, the DEA's definition of contract requirements could be improved. The contract's estimated quantity of hours resulted in unrealistic and inflated numbers of required linguists per language and location. Consequently, both the DEA and Conduit experienced challenges related to ensuring linguists were kept working and compliant with the contract terms and the DEA's security requirements.

Due to the importance and repeated occurrences of some of these deficiencies, these weaknesses should be promptly addressed to ensure that the DEA's drug investigations are not adversely affected.

We recommend the Justice Management Division:

1. Develop guidance on resources and training available to ensure compliance and accurate enforcement of the SCLS on DOJ service contracts.

We recommend the DEA:

2. Remedy \$3,695,731 in unallowable costs associated with:
 - a. \$2,493,784 paid to linguists without valid language proficiency testing results.
 - b. \$505,717 paid for linguists and a Regional Program Manager without valid background investigations.
 - c. \$661,885 paid for linguists without signed non-disclosure agreements on file prior to working under the contract.
 - d. \$924 in travel costs for incorrect mileage, mileage and per diem rates, and costs not associated with official business travel.
 - e. \$33,421 in unreasonable costs the DEA paid to another linguist contractor for Arabic linguists **due to the Contracting Officer's** inadequate review of contractor rates and failure to ensure the rates were fair and reasonable.
3. Ensure corrective actions are taken to address deficiencies related to language proficiency and security requirements for linguists:
 - a. Establish procedures to ensure that linguists working under a DEA linguist contract have the proper language proficiency test results; evaluate the existing language proficiency testing to determine whether other testing is better suited to assess the skills needed by linguists to perform the work under the contract; and develop guidance for what situations warrant language proficiency waivers.
 - b. Ensure that all linguists sign a non-disclosure agreement prior to working on the contract and consider including the language identified in 5 U.S.C. § 2302(b)(13) in all non-disclosure agreements.
 - c. Formalize procedures to ensure that all linguists who work under the contract have favorably adjudicated background investigations and ensure that waivers are tracked to confirm that no lapses occur while background investigations are in process.
 - d. Develop procedures to inform Conduit about security developments including issuance of waivers and the status of linguist background investigations.

- e. Ensure that linguists working under DEA linguist contracts are issued PIV cards that meet the requirements defined in FIPS Publication 201-2 and HSPD-12.
 - f. Develop procedures to ensure that the Contract Personnel Reports Conduit is required to send to the DEA are reviewed, tracked, and maintained in accordance with HSPD-12 and the contract terms and conditions.
4. Ensure corrective actions are taken to address weaknesses related to contract administration and oversight:
- a. Ensure that the Contract Administration Plan is enforced in its entirety and ensure the completion of the Contract Administration Checklists as identified in the plan.
 - b. Review all task orders issued under the contract where the DEA paid travel costs to ensure the travel costs were properly reimbursed.
 - c. Review the COR Designation Letter and revise as necessary to ensure **the COR's responsibilities** are properly documented.
 - d. Evaluate whether more than one COR for the eight regional linguists contracts would result in better management and oversight, develop policies and procedures to ensure the COR performs the responsibilities as delegated, and ensure other responsibilities assigned to SOD for the linguist program are documented and followed.
 - e. Ensure that Conduit notifies the COR when a task order for the contract is completed.
 - f. Ensure that Conduit developed and implemented an automated task order entry and tracking system as required by the contract.
 - g. Ensure that the TMs and COR complete the three Federal Acquisition Courses required by the DOJ for all levels of FAC-COR and provide documentation to support completion of these courses.
 - h. Ensure that TMs complete documentation as required by the contract and the DEA Contract Administration Plan and communicate regularly with the COR and the Contracting Officer, which includes notifying the Contracting Officer prior to any change in the TM assignments.
 - i. Ensure the Contracting Officer completes a performance assessment report in CPARS for the current year of the contract and completes a

final performance assessment report in CPARS upon completion of the contract next year.

- j. Develop procedures to ensure that the Contracting Officer completes the performance assessment report in CPARS regardless of whether a notification is received from CPARS.
- k. Ensure that Customer Satisfaction Surveys are provided to and completed by Case Agents, and are collected by TMs on a monthly basis.
- l. Coordinate with Conduit to ensure Case Agents complete and submit End of Case Surveys to the DEA and Conduit to provide feedback and identify any areas of improvement.
- m. Develop controls for contract management to ensure contract requirements are met and applicable laws and regulations are followed.
- n. Require Conduit to submit Administrative Reports that contain all the data required and develop procedures to ensure deliverables are submitted and reviewed for accuracy and completeness in accordance with the contract terms and conditions.

5. Ensure corrective actions are taken to address contract quality assurance:

- a. Develop its own QASP for the contract to assess the quality and timeliness of services performed by the contractor.
- b. Develop a QA program and procedures for reviewing and validating linguist work to ensure the work is reliable, consistent, and accurate.
- c. Establish procedures to ensure the COR and TM review **Conduit's QA** plan on a regular basis, including any updates or revisions, and ensure that Conduit is completing QA responsibilities in accordance with its plan.
- d. Ensure that the TMs notify the Contracting Officer whenever Conduit is unable to satisfy a task order requirement and that the Contracting Officer enforce the contract requirements and address any issues of non-compliance, including documenting the non-compliance in CPARS.
- e. Determine whether other methods should be used to obtain linguists for languages it requires that are not the main languages required by the contract, and develop policy and procedures for obtaining linguists fluent in those languages if contractors are unable to meet

language requirements, such as utilizing the NVTC, to reduce the risk of the DEA's requirements not being met.

6. Ensure Conduit consults with the DEA TMs and Case Agents prior to changing linguist assignments, and puts in place procedures to limit these changes as much as possible to prevent disruption of law enforcement investigations and ensure continuity of services.
7. Ensure corrective actions are taken to address compliance with the SCLS:
 - a. Ensure Conduit works with the DOL to calculate the fringe benefits Conduit should have paid to linguists in accordance with the SCLS and DOL WD number 2012-0012 and ensure that Conduit pays those benefits to all affected linguists who worked under the contract.
 - b. Ensure Conduit works with the DOL to ensure it properly paid fringe benefits to linguists who worked on its other DEA regional linguist contract number DJD-13-C-0003.
 - c. Ensure Conduit keeps adequate records in compliance 29 C.F.R. § 4.6(g)(1) and work with Conduit to verify the correct total of employee linguists and independent contractor linguists who worked under the contract.
 - d. Work with Conduit to determine the proper price adjustments Conduit should have received, remedy any excess costs paid to Conduit for the improperly approved increases to G&A and profit, and ensure Conduit consults with the DOL on the payment of health insurance benefits to its linguists and the related payroll taxes associated with such benefits.
 - e. Ensure that Conduit submits the necessary documentation to support its requests for price adjustments.
 - f. Ensure the memorandum to the file for the price adjustments **includes the Contracting Officer's methodology for determining how a price adjustment is accurate and valid**, and in accordance with the DOL WD and the FAR.
 - g. Review the PACT User Guide and Department of Navy Desk Guide for Service Contract Price Adjustments to identify best practices and use them to develop DEA-specific guidance for use by contracting officials administering DEA service contracts, including reviewing and approving price adjustments.
8. Ensure the Contracting Officer adequately reviews contractor rates to ensure that the rates are fair and reasonable for any order issued to

another linguist contractor, which could include using GSA FSS contracts to meet the DEA's needs.

9. Work with Conduit to review its fixed billing rate calculations and ensure its calculations are accurate.
10. Ensure Conduit notifies the DEA of staffing changes that affect management and quality control of the contract.
11. Develop a methodology and procedures for solicitation development that accurately describes the need to be filled through service contracting. This may include a review of the contract terms for each location to determine whether: (1) the minimum number of linguists are accurate, (2) the minimum number of linguists reflect the actual need of the locations, (3) the contract terms should allow for reimbursement of travel costs for certain situations, and (4) there is a more efficient method to provide linguist services to smaller locations.

STATEMENT ON INTERNAL CONTROLS

As required by the *Government Auditing Standards*, we tested, as appropriate, internal controls significant within the context of our audit objectives. A deficiency in an internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to timely prevent or detect: (1) impairments to the effectiveness and efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations. Our evaluation of the Drug Enforcement Administration's (DEA) administration of contract number DJD-13-C-0004 awarded to Conduit Language Specialists, Inc. (Conduit) and **Conduit's compliance with the contract requirements** was not made for the purpose of providing assurance on its internal control structure as a whole. The **DEA's and Conduit's** management are responsible for the establishment and maintenance of internal controls.

As noted in the *Audit Results* section of this report, we identified deficiencies in the DEA's internal controls. We determined that the DEA's contract oversight and monitoring were not adequate to sufficiently monitor contractor performance. This determination was based on several problems including:

- allowing linguists to work under the contract without proper language proficiency certifications, valid background investigations, or signed non-disclosure agreements;
- incomplete contract deliverables;
- inadequate Task Monitor training;
- insufficient government quality assurance surveillance; and
- inadequate guidance related to *Service Contract Labor Standards* (SCLS).

Several of these problems appear to be deficiencies with the **DEA's** overall contract oversight and monitoring. Therefore, we believe these issues may exist in **the DEA's other seven regional linguist contracts**. Because we are not expressing an opinion on the **DEA's internal control structure as a whole, this statement is** intended solely for the information and use of the DEA. This restriction is not intended to limit the distribution of this report, which is a matter of public record.

STATEMENT ON COMPLIANCE WITH LAWS AND REGULATIONS

As required by the *Government Auditing Standards* we tested, as appropriate given our audit scope and objectives, selected transactions, records, procedures, and practices, to obtain reasonable assurance that the **DEA's and Conduit's** management complied with federal laws and regulations for which non-compliance, in our judgment, could have a material effect on the results of our audit. **DEA's and Conduit's** management are responsible for ensuring compliance with applicable federal laws and regulations. In planning our audit, we identified the following laws and regulations that concerned the operations of the auditees and that were significant within the context of the audit objectives:

- Federal Acquisition Regulation (FAR)
 - FAR Subpart 46.4, *Government Contract Quality Assurance*
 - FAR Subpart 16.6, *Time-and-Materials, Labor-Hour, and Letter Contracts*
 - FAR 52.222-43, *Fair Labor Standards Act and Service Contract Labor Standards – Price Adjustment*
 - FAR Part 22.001, *Definitions*
 - FAR Part 22.1003-7, *Questions concerning applicability of the Service Contract Labor Standards statute*
 - FAR Part 37, *Service Contracting*
- Department of Homeland Security Presidential Directive 12, *Policy for a Common Identification Standard for Federal Employees and Contractors*
- Federal Information Processing Standards Publication 201-2, *Personal Identity Verification of Federal Employees and Contractors*
- 29 Code of Federal Regulations § 4, *Labor Standards for Federal Service Contracts*

Our audit included examining, on a test basis, **the DEA's and Conduit's** compliance with the aforementioned laws and regulations that could have a material effect on **the DEA's and Conduit's operations**. We interviewed auditee personnel, assessed internal control procedures, and examined payroll records and contract deliverables. As noted in the *Audit Results* section of this report, we determined that the DEA did not adequately monitor the language and security requirements of linguists and performed insufficient contract administration and oversight which led to contractor performance issues. In addition, we determined Conduit did not comply with the SCLS in distributing fringe benefits to some of its linguists and in its calculation of price adjustments pursuant to updated wage determinations.

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The **objective of this audit was to assess the DEA's** administration of and **Conduit's performance in compliance with the contract terms and conditions in the** areas of: (1) contractor performance; (2) billings and payments; and (3) contract management, oversight, and monitoring.

Scope and Methodology

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

This was an audit of DEA contract number DJD-13-C-0004, awarded to Conduit for analytic linguist services for the mountain region. Our audit generally covered, but was not limited to October 2012 through April 2017.

To ensure compliance with contract management, oversight, and monitoring, **we reviewed the DEA's Contract Administration** Plan for the contract. We examined **Conduit's** QA Plan to determine whether Conduit monitored the quality of linguist services provided under the contract and whether the services provided matched the contract requirement, but we did not review the plan the DEA incorporated into the contract because the DEA did not include the full plan in the contract.

To assess contract performance, we interviewed Conduit personnel, including field division supervisors and linguists, and Case Agents at **DEA's Denver and Phoenix** Field Divisions. We also surveyed 50 Case Agents (25 at each field **division) to identify how the agents used the linguist's work and whether they had** any concerns regarding linguist performance.

Lastly, to ensure compliance with contract requirements regarding billing and payments, we reviewed a sample of task orders and related invoices to assess the accuracy of linguist hours charged by Conduit. We also **reviewed Conduit's fixed** billing rates to determine compliance with FAR requirements related to payment of prevailing wages and benefits to personnel based on locality.

Review of Language Proficiency Testing and Security Requirements

The contract identified specific requirements for linguists including language proficiency testing in the source language and English, favorable completion of a

background investigation, and signing a non-disclosure agreement prior to working under the contract. To assess **Conduit's compliance with these requirements for** linguists, we selected a sample of 30 linguists who worked on our sample of task orders, the selection of which we explain below. We requested, but the DEA could not provide, evidence of language proficiency testing results in the four basic communication skills (listening, reading, writing, and speaking), notification of favorable background investigation, and signed non-disclosure forms for all linguists in our sample. As a result, we expanded our sample to include five more linguists who had supervisory responsibilities and tested the same requirements for these individuals.

Task Order and Invoice Review

When we began this audit in September 2016, the DEA had issued 1,977 task orders to Conduit for linguist services from December 2012 to September 2016. These task orders represented obligations of approximately \$31 million. While the DEA issued a large number of task orders under the contract, the average task order was valued at \$15,483. Using professional judgment, we selected a non-statistical sample of 15 task orders totaling \$608,848. Our judgmental sample included task orders from each year (2012 through 2016) for the **DEA's Denver and Phoenix Field Divisions** and included a range of low and high dollar values. We employed this judgmental sampling design to identify a smaller number of task orders that we could reasonably review and could expand if necessary. We reviewed each task order and the related documentation which included the requisition form from the field division identifying the services required, any modifications, invoices, and closeout actions. A task order was valid for 30 days. Under the task orders, Conduit submitted invoices to the DEA for linguist services in 2 week increments. We reviewed each of the invoices for the task orders in our sample, to verify the completeness and accuracy of the invoices **in accordance with contract requirements, the accuracy of the contractor's** calculations, and the accuracy and completeness of the linguist hours billed under each task order. Our sample selection methodology was not designed with the intent of projecting our results to the population from which the samples were selected.

We also reviewed three task orders we found the DEA issued to other linguist contractors as a result of Conduit being unable to provide Arabic linguists.⁴⁵ We reviewed the task order documentation including estimates received by the DEA for the Arabic linguists and the invoices. We totaled the hours billed (both regular and overtime/holiday) by the other linguist contractor for the Arabic linguists and used the applicable rates under the contract for regular and overtime/holiday hours for Arabic linguists to calculate what the DEA would have paid for those services under its contract with Conduit.

⁴⁵ The DEA issued three task orders between two contractors; however, one of the task orders was issued to a contractor, but the DEA later cancelled the task order since the contractor no longer had the linguists available and a new task order was issued to the other contractor.

Review of Compliance with the Service Contract Labor Standards

We assessed Conduit's compliance with the SCLS to determine whether linguists were classified properly and paid the requisite amounts of wages and fringe benefits. To accomplish this, we initially requested a list of all linguists (including both employees and independent contractors) who worked under the contract, information on the cost of fringe benefits offered to linguists, and the U.S. Department of Labor (DOL) Wage Determinations (WD) containing the minimum wages and benefits. However, Conduit was unable to readily provide us complete information including: a complete list of all linguists who worked under the contract, a list of hours worked by each linguist per year under the contract. Thus to identify the number of linguists who worked under the contract, we used a list of **linguists from the DEA's Chronus system** that was used by linguists to clock in and out when working under the contract. However, Chronus was not fully operational until March 2014, so the list we received mainly included linguists who worked from 2014 through 2017. We used the list of linguists from Chronus and compared it against the list of independent contractors Conduit provided to determine our estimate of the total number of employee and independent contractor linguists who worked under the contract.

As a result of the incomplete documentation provided by Conduit, we judgmentally selected from our sample of task orders from eight pay periods: one pay period from 2012 and 2013, and two pay periods each from 2014, 2015, and 2016 **to assess Conduit's compliance with the SCLS**. To accomplish this, we obtained payroll records for linguist actual wages and fringe benefits. We compared the wages earned by each linguist and the fringe benefit amounts paid to a third party for linguists (i.e., health insurance) or paid as a cash payout, against the wage and fringe benefit rates in the DOL WD. We also verified with Conduit officials how linguists earned holidays and vacation and compared the amounts against those in the DOL WD. Our sample selection methodology was not designed with the intent of projecting our results to the population from which the samples were selected.

We also assessed whether Conduit's requests for price adjustments for the contract were accurate and justified and whether the DEA properly reviewed, approved, and verified Conduit's requests for price adjustments. To accomplish this, we obtained Conduit's request for price adjustments sent to the DEA and the DOL WDs containing the minimum wages and benefits. We reviewed Conduit's fixed billing rate calculations for each price adjustment it requested and compared the linguist wage rates and fringe benefit rates to those in the WD revision for which Conduit was requesting an adjustment. We also reviewed Conduit's fixed billing rate calculations to determine whether it included increases to overhead, profit, and general and administration costs, which are prohibited by the FAR.

SCHEDULE OF DOLLAR-RELATED FINDINGS

| <u>Description</u> | <u>Amount</u> | <u>Page</u> |
|---|--------------------|-------------|
| Questioned Costs: ⁴⁶ | | |
| Unallowable Costs | | |
| Lack of Language Proficiency Testing Results | \$2,493,784 | 10 |
| Lack of Favorably Adjudicated Background Investigations | 505,717 | 12 |
| Lack of Signed Non-Disclosure Agreements | 661,885 | 13 |
| Improper Travel Costs | 924 | 17 |
| Unreasonable Costs Paid for Arabic Linguists | <u>33,421</u> | 31 |
| Total Unallowable Costs | \$3,695,731 | |
| <i>Gross Questioned Costs</i> | \$3,695,731 | |
| Less Duplicate Questioned Costs ⁴⁷ | (807,697) | |
| NET QUESTIONED COSTS | \$2,888,034 | |

⁴⁶ Questioned Costs are expenditures that do not comply with legal, regulatory, or contractual requirements, or are not supported by adequate documentation at the time of the audit, or are unnecessary or unreasonable. Questioned costs may be remedied by offset, waiver, recovery of funds, or the provision of supporting documentation.

⁴⁷ Some costs were questioned for more than one reason. Net questioned costs exclude: (1) the duplicate amount of \$192,328 for linguists without valid background investigations, which was included in the questioned costs for linguists without language proficiency testing results, (2) the duplicate amount of \$598,464 for linguists without non-disclosure forms, which was included in the questioned costs for linguists without language proficiency testing results, and (3) the duplicate amount of \$16,905 for a linguist without a non-disclosure form, which was included in the questioned costs for linguists without valid background investigations.

OIG MANAGEMENT ADVISORY MEMORANDUM TO THE DEA ON
OVERSIGHT OF CONTRACTS FOR ANALYTIC LINGUIST
SERVICES



U.S. Department of Justice

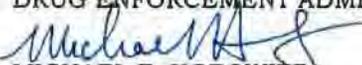
Office of the Inspector General

February 28, 2017

MANAGEMENT ADVISORY MEMORANDUM FOR:

CHUCK ROSENBERG
ACTING ADMINISTRATOR
DRUG ENFORCEMENT ADMINISTRATION

FROM:


MICHAEL E. HOROWITZ
INSPECTOR GENERAL

SUBJECT:

Notification of Concerns Identified in the
Drug Enforcement Administration's Oversight
of Contracts for Analytic Linguist Services

The purpose of this memorandum is to advise you of concerns that we identified during the course of our ongoing audit of the Drug Enforcement Administration's (DEA) contract number DJD-13-C-0004, awarded to Conduit Language Specialists, Inc. (Conduit) for analytic linguist services for the mountain region. We began our audit in September 2016 to assess the DEA's administration of and Conduit's performance in accordance with the terms, conditions, laws, and regulations applicable to this contract. Since that time, we have identified concerns related to the language proficiency of linguists, the DEA's and Conduit's quality assurance (QA) practices, and the DEA's ability to adequately define its contract need.

We understand that the DEA is in the process of planning for new analytic linguist services contracts. Although our audit has not concluded, this memorandum provides early notification of our concerns that we believe are significant enough to warrant the DEA's immediate attention and consideration in its new contract planning.

The DEA awarded time and materials contract number DJD-13-C-0004 to Conduit in October 2012 for analytic linguist services such as transcription, translation, and interpretation. The DEA also awarded seven other regional

analytic linguist services contracts. The majority of the contracts are scheduled to end in October 2017.¹

Deficiencies with Linguist Language Proficiency Testing & Security Requirements

The contract states that language proficiency testing in the source language(s) and English is required for all analytic linguists (linguists) in the four basic communications skills (listening, reading, writing, and speaking). Evidence of language proficiency testing with acceptable results from organizations listed in the contract is required to be submitted to the DEA Task Monitor for all linguists prior to working on the contract. We found that DEA Task Monitors were not aware of this requirement and have never asked for these results. Indeed, Conduit has never provided results to DEA for linguists on this contract.

We examined an initial sample of 30 out of 490 linguists on the contract and determined that 28 of the 30 linguists did not have the required testing completed prior to working on the contract. As a result, Conduit billed the DEA an estimated \$2,238,077 for linguists without valid language proficiency test results.² Compounding the deficiencies with language proficiency testing, we also identified a linguist without a valid background investigation and two linguists who did not have approved waivers to work on the contract while their background investigations were in process. Furthermore, we identified 13 linguists that had not signed non-disclosure agreements prior to working on the contract.³

After we asked DEA officials about test results, which DEA could not provide, the Contracting Officer, with no further explanation, signed waivers in December 2016 and January 2017 for the writing portion of the tests for 125 linguists. However, the DEA stated that an inordinate amount of waivers may be indicative of substandard performance. The contract indicated waivers are to be submitted and approved along with a justification on an individual basis. According to DEA officials, the justification for all of the issued waivers

¹ The DEA awarded Conduit two of the regional contracts; contract numbers DJD-13-C-0004 and DJD-13-C-0003. One of the eight contracts is scheduled to end in November 2018.

² This calculation was based on the approximate total hours worked for these 28 linguists and the average cost per hour for each linguist for both divisions for Spanish and common languages from the base period of the contract. We have not completed our analysis to determine the exact amount Conduit billed the DEA for the 28 linguists. Therefore, the amount presented in this management advisory memorandum is subject to change.

³ We also note that the non-disclosure agreements that we reviewed did not contain the language set forth in 5 U.S.C. § 2302(b)(13) prohibiting their application to limit whistleblower disclosures.

was a backlog in the re-certification process without any consideration of actual language proficiency. We consider this justification to be questionable at best since the 28 linguists in our sample were not even in the re-certification process as Conduit did not provide any prior test results for those linguists to the OIG. Additionally, we determined that several of the linguists granted waivers were already working on the contract prior to receiving a waiver. Without the required test results, the DEA cannot ensure it is paying for the required level of service as stipulated in the contract, raising concerns regarding the validity and accuracy of linguist work, which the DEA relies on when developing cases. Furthermore, without proper background investigations and signed non-disclosure agreements, DEA cannot ensure the integrity of the cases under investigation.

It is important to note that in two previous OIG audits of the DEA's linguist services contracts in December 2010 and February 2012, we found that the linguists working on the DEA contracts did not have valid language certifications.⁴ In both reports we recommended that the DEA correct the issue and the DEA agreed with our recommendations. However, it appears this issue was not permanently addressed and may be a systemic issue for the DEA covering multiple contractors across multiple years.

Lack of a Government Quality Assurance Surveillance Plan and Insufficient Contractor Monitoring

According to Federal Acquisition Regulation (FAR) Subpart 46.4, *Government Contract Quality Assurance*, quality assurance surveillance plans should be prepared in conjunction with the statement of work and agencies should ensure government contract QA is conducted by or under supervision of government personnel. Additionally, FAR 16.601, *Time and Materials Contracts*, emphasizes the importance of government QA of contractor performance due to the increased risk to the government when using time and materials contracts. However, we found that the DEA did not develop a government quality assurance surveillance plan and only performs limited QA for this contract. The DEA case agents only review the English synopses that linguists complete.

Under the contract, Conduit has primary responsibility for performing QA to ensure linguist work is accurate and complete. However, we found that Conduit was not enforcing their QA plan. For example, Conduit was not

⁴ *Audit of the Drug Enforcement Administration's Language Services Contract with MVM, Inc. Contract No. DJDEA-08-C-0047 El Paso Field Division, Audit Report GR-60-11-006 (December 2010). Audit of the Drug Enforcement Administration's Language Services Contract with SOS International, Ltd. Contract Number DJDEA-05-C-0020 Dallas Field Division, Audit Report GR-60-12-004 (February 2012).*

completing a Monthly QA Checklist as required by their QA plan. The Monthly QA Checklist contains 40 quality points that can be tracked, measured, and changed to meet target goals set by the DEA related to security, translation accuracy, timeliness, personnel availability, and linguist responsibilities. Additionally, Conduit has some QA positions that remain un-filled.

Due to the absence of a government QA plan and the deficiencies in Conduit's monitoring, the DEA again cannot ensure it is receiving the required level of service it is paying for and raises concerns regarding the validity and accuracy of linguist work, on which the DEA relies when developing cases.⁵

Definition of Contract Need

FAR Part 37, *Service Contracting*, states that agency officials are responsible for accurately describing the need to be filled through service contracting that ensures full understanding and responsive performance by contractor.

The DEA awarded contract number DJD-13-C-0004 with a ceiling of \$133 million, which increased to \$135 million, but has only obligated approximately \$33.5 million. Using historical costs, the DEA estimated the total contract to be only \$40 million. We found the primary requirement for the contract need was the maximum number of hours per language, resulting in an unrealistic and inflated number of linguists per division or office. The DEA estimated 150 linguists for the Phoenix division and 75 linguists for the Centennial office. However, the actual capacities of the wire rooms are 83 workstations for Phoenix and 28 for Centennial. The DEA also required linguists for the Larimer offices where no wire rooms currently exist.

Due to the unrealistic number of hours and related linguists required at each location, Conduit cannot keep linguists with completed background investigations available at smaller offices. When linguists are needed, they may not have valid background investigations, or require additional checks or reinvestigations to be able to work. While Conduit can bring in linguists from other locations to work at the smaller offices, Conduit must pay the travel costs, unless the number of linguists needed exceeds the required number identified in the contract. This has never happened under the contract. Although the DEA's obligation for travel costs is limited under the contract, the DEA still included \$5 million for travel costs, without a clear justification.

⁵ While our audit is continuing, DEA should consider assessing the potential impact that deficiencies in proficiency testing and quality assurance may have on completed or ongoing prosecutions and notify any affected authorities.

We found the DEA's development of requirements for contract number DJD-13-C-0004 did not include a complete methodology to support the contract need. Since the DEA has begun planning for the next linguist contracts, we believe it is imperative the DEA ensure its methodology for determining its needs for linguists is adequately defined and supported. This would help ensure contractors can appropriately price and estimate personnel requirements, as well as improve the efficiency of background investigations.

We are continuing our audit of the DEA linguist services contract number DJD-13-C-0004 awarded to Conduit. We will include in our final report any actions the DEA takes based on the concerns raised in this memorandum. While we did not review the other contract the DEA awarded to Conduit for linguist services – contract number DJD-13-C-0003 – for the northwest coast region, the concerns we identified are potentially occurring on that contract, as well.

If you have any questions or would like to discuss the information in the memorandum, please contact me at (202) 514-3435, or Jason R. Malmstrom, Assistant Inspector General for Audit, at (202) 616-4633.

cc: Gary Barnett
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**THE DEA'S RESPONSE TO THE OIG'S MANAGEMENT ADVISORY
MEMORANDUM**



U. S. Department of Justice
Drug Enforcement Administration

www.dea.gov

Washington, D.C. 20537

APR 05 2017

MEMORANDUM

TO: Jason R. Malmstorm
Assistant Inspector General for Audit
Office of the Inspector General

FROM: Mary B. Schaefer 
Chief Compliance Officer
Office of Compliance

SUBJECT: DEA Response for the OIG Management Advisory Memorandum: "*Notification of Concerns Identified in the Drug Enforcement Administration's Oversight of Contracts for Analytic Linguist Services*"

The Drug Enforcement Administration (DEA) provides this memorandum to address the Office of the Inspector General's (OIG) concerns identified during the course of their ongoing audit of the Drug Enforcement Administration's (DEA) contract number DJD-13-C-0004, a contract awarded to Conduit Language Specialists, Inc. (Conduit) for analytic linguist services for the Mountain Region on October 31, 2012. DEA understands that since initiating this audit in September 2016, the OIG has identified concerns related to language proficiency of linguists, the DEA's and Conduit's quality assurance (QA) practices, and the DEA's ability to adequately define its contract need. In view of OIG's concerns, the DEA has taken immediate action and is committing further attention and consideration towards addressing the identified issues.

The DEA awarded a total of eight Indefinite Delivery/Indefinite Quantity, Time and Materials contracts in 2012 and 2013 for regional linguist services which included the subject contract with Conduit. The actions taken by DEA to address these administrative details will be implemented for all eight contracts, as needed, and in the upcoming solicitation for follow-on awards.

For the regional linguist program, one Contracting Officer's Representative (COR), and twenty-one (21) Task Monitors (TMs) are each delegated (in writing) specific contract administration duties by the Contracting Officer, including the monitoring of contractor performance. In the past, only the COR was required to successfully complete Federal Acquisition Certification (FAC) training (DEA has an established policy that all CORs must complete the required training to be designated and

certified as a FAC-COR Level II). As a result of this OIG audit, DEA has implemented a new pilot program that will require all TMs to complete FAC-COR training and be certified at Level I. Thus far, eight (8) of the twenty-one (21) field division TMs assigned to the linguist contracts, have successfully completed the requisite level of training and another nine (9) are in the process of completing it. The Contracting Officer continues to work with the remaining four (4) TMs to ensure successful completion of this training effort. The DEA Contracting Officer will further ensure that the COR and all TMs understand their roles and responsibilities. The Contracting Officer is responsible for formally notifying the contractor of the deficiencies identified in the OIG audit and their obligation to meet all the requirements specified in the contract.

Deficiencies with Linguist Language Proficiency Testing and Security Requirements

The contract requires that linguists are tested for language proficiency, or receive a waiver from the Contracting Officer, prior to beginning work. The contract also requires that each linguist be cleared by the DEA Office of Security Programs. Details are specified in the contract (Section C – Statement of Work) and the contractor is required to comply. The COR/TMs are the Contracting Officer's representatives responsible for ensuring compliance with the contract terms and conditions and accepting services prior to payment. Unfortunately, payments and work products already accepted and approved for payment are final despite instances of non-compliance with the administrative details identified by this audit.

To improve compliance, the Contracting Officer will provide additional information to the COR/TMs and the contractor to ensure a complete understanding of the contract requirements. The Contracting Officer will ensure the COR/TMs and the contractor understand that work should not begin on any task order before verifying that the requirements for language proficiency and security are met and non-disclosure agreements are signed. The contractor will be required to demonstrate compliance in advance and the COR/TM will verify and document this in the contract file. The Contracting Officer will retain the authority to provide waivers for language proficiency when sufficiently justified in writing by the contractor and recommended by the COR/TM.

Revised guidance and procedures regarding submission of security packages have been recently implemented at the Special Operations Division (SOD) which functions as the COR for the linguist contracts. These procedures which have been communicated to the COR/TMs and contractor will be reviewed to ensure coordination with the requirements established by the contract and the Office of Security Programs (IS) (see IS requirements below). The Contracting Officer will provide additional guidance to all parties regarding verification of security clearances and non-disclosure agreements.

The DEA Office of Security Programs must approve all linguists for access to DEA information or facilities before DEA field offices may utilize them for translation or transcription services under a DEA linguist contract. For each prospective linguist, IS reviews a "security package" containing a Standard Form 85P completed by the linguist, criminal record check results, credit reports, a "Foreign Relatives Statement" (if applicable), and a Drug Use Statement. If security concerns are reflected in any of these documents, IS makes efforts to mitigate the concerns, if possible, or disqualifies the prospective linguist. If security concerns are not present, or are mitigated, IS

schedules a background investigation (BI) with the National Background Investigations Bureau (NBIB). In accordance with Department of Justice Order 1700.01, at that time, IS may grant a "waiver" that approves access for the prospective linguist pending a review of the full NBIB BI. In the instances in which IS grants a waiver, IS notifies the COR for linguist contracts and the field Division Security Officer (DSO) where the linguist will work. After the NBIB BI is completed and submitted, IS reviews it and makes a "final" access determination. If derogatory information was developed regarding a linguist who was granted a waiver, IS attempts to mitigate the concerns or withdraws the waiver and disqualifies the linguist. IS notifies the COR and the DSO of that determination. If the BI does not reflect derogatory information, or such information is mitigated, IS grants full approval for access and notifies the COR and the DSO. Each DSO is aware that they may not utilize linguists until IS grants a waiver or final approval. In addition, IS reviews derogatory information developed after approval and schedules five-year periodic reinvestigations with NBIB.

It should be noted, before April 2014, DSOs in 21 field divisions managed the linguist "programs" in each of their areas of responsibility, including communication with the linguist companies and tracking linguist work hours and availability. Due to logistic and communication challenges related to this decentralized approach, and the pressure DSOs were under to provide support to their field offices, linguists were occasionally put to work, at the field level, without appropriate vetting and approval by IS. In April 2014, the COR centralized the program by taking over management of all linguist "regional" contracts. In 2016, each regional contract was modified to identify the COR as the sole point of contact for all security packages and linguist-related information. The COR now centrally coordinates the vetting process and manages linguist work hours and availability. The COR also works directly with the linguist companies to ensure they meet requirements of the contract, in particular the minimum-linguist-per-office requirement. In 2017, the COR began providing each contract company a weekly status report letting them know where their linguists are in the process and whether they are available to work. Due to the COR's involvement and efforts, DEA now consistently tracks all security packages from the date received to approval or disqualification; time, attendance, and location of all approved linguists; waiver expirations and due dates for periodic reinvestigations.

In spite of these improvements, there is more that we can do. As highlighted by the OIG's review thus far, the local DSO currently maintains the NDAs. Based on this review, the COR has begun the process of verifying NDAs are in place for all linguists on all contracts and will maintain a copy of the NDA as part of the approval package maintained on each linguist.

As part of its efforts, IS recently conducted an audit of all linguists who worked under this contract in the Phoenix and Denver divisions from September 1, 2016 through January 2017 and determined they had each been approved by IS before they received access to DEA information.

The changes implemented by the COR after taking responsibility for, and thereby centralizing and making consistent, all DEA regional linguist contracts ensures DEA will not utilize linguists until IS has approved them access to DEA information and facilities and they have signed a non-disclosure agreement. As part of the process, the COR continuously communicates with each DSO to ensure they are educated regarding the contract requirements and only utilize thoroughly vetted and approved linguists.

Lack of Government Quality Assurance Surveillance Plan and Insufficient Contractor Monitoring

The current Quality Assurance Plan proposed by the contractor and ultimately accepted by the DEA appears to be too broad and extensive to effectively administer in a timely manner. In light of recent changes including the processing of security packages, newly required training, and general DEA internal linguist program centralization, the originally implemented Quality Assurance Plan contains areas which have been identified as potential areas of improvement. Therefore, the DEA intends to negotiate a revised quality control plan and Quality Assurance Surveillance Plan (QASP) with the contractor. The new QASP will specify critical, measurable criteria that are verifiable by the government on a frequent, periodic basis. The Contracting Officer will implement the final Plan and require contractor submissions for COR/TM review/verification and CO approval. Additionally, the contractor will be required to provide the number and skill level of quality assurance staff proposed and accepted by the government when the contract is awarded.

Definition of Contract Need

In the year the solicitation was issued for the contract under review, the requiring office provided their government estimate based on historical data and anticipated future needs. That data was evaluated, discussed, reaffirmed and found acceptable as a best estimate prior to soliciting proposals. The data collected was based on the numbers of linguists performing the work, shifts, workstations, etc. provided by the domestic field divisions. The centralization of the linguist program by the COR has resulted in improvements in tracking critical program data. For the new follow-on procurement of linguist services, the Contracting Officer will require Field Divisions to more adequately document their rationale for arriving at the independent government estimate.

The DEA intended to obtain and attempted to require that the contractor maintain a regional pool of qualified linguists (compliant with contract requirements) that could respond at a moment's notice to government requirements at the rates specified in the contract. Further, the solicitation required offerors to propose fully burdened labor rates to include all indirect costs, estimated travel, and profit in order to reduce/eliminate the government's administrative responsibility for processing excessive numbers of travel vouchers. However, in practice, the nature of the business has not readily lent itself to maintaining such pre-priced linguist pools. In most cases, the linguists shift frequently to other jobs under other contracts as well as other agencies. This movement, or the lack of an existing pool of qualified linguists, is a challenge for the contractor as well as the government.

It is important to note that the OIG audit did not identify deficiencies in the vendor's final work product, nor has the Office of Acquisition & Relocation Management been notified by the Division of poor vendor performance. Instead, the OIG report has focused on whether the contractor followed the prescriptive plan as outlined in the contract.

Ultimately, however, mission is paramount. The program's need for the service is demonstrated by the vendor when the final product effectively enables DEA agents to build solid investigative cases, not when the vendor has fulfilled each administrative input. When effectively crafted, administrative inputs can help ensure work is being done correctly. To that end, the government is resolved to collaborate with stakeholders to design effective procedures – starting with the QASP –

which can be maintained without diminishing the focus on the quality of the final work product.

Thank you for the opportunity to address the concerns found thus far in this audit. If you have any questions regarding this response, please contact the Audit Liaison Team, at 202-307-8200.

THE DRUG ENFORCEMENT **ADMINISTRATION'S**
RESPONSE TO THE DRAFT AUDIT REPORT



U. S. Department of Justice
Drug Enforcement Administration

www.dea.gov

Washington, D.C. 20537

OCT 12 2017

MEMORANDUM

TO: Jason R. Malmstrom
Assistant Inspector General
For Audit

FROM: Mary B. Schaefer 
Chief Compliance Officer
Office of Compliance

SUBJECT: DEA Response to the OIG Formal Draft Report: "Audit of the Drug Enforcement Administration's Regional Linguist Services Contract Awarded to Conduit Language Specialist, Inc."

The Drug Enforcement Administration (DEA) has reviewed the Department of Justice (DOJ) Office of the Inspector General's (OIG), Audit Division, report entitled "*Audit of the Drug Enforcement Administration's Regional Linguist Services Contract Awarded to Conduit Language Specialist, Inc.*" DEA acknowledges and is appreciative of the role the OIG played in identifying areas of weakness to assist DEA in improving contract administration and oversight of the linguist contracts.

As a result of its review, the OIG determined that work was being performed under this contract without consistent oversight and maintenance of required underlying paperwork. DEA acknowledges these gaps and is instituting measures to better ensure that contract requirements are met and oversight is provided. The OIG expressed concern regarding the maintenance of valid language proficiency results. DEA acknowledges this failure. That said, DEA does not use language proficiency test as its sole means of assessing the quality of a linguist's work. Rather, the daily review by supervisors in field division offices serves as a constant monitor over the work of DEA's contract linguists. This daily oversight, coupled with increasing levels of review as an intercept moves from an on-the-spot translation to a full transcription, helps to protect evidence and ensure accuracy.

OIG made eleven recommendations in this report. DEA provides the following responses to the ten recommendations (2-11) made to DEA:

Recommendation 2. Remedy \$3,695,731 in net unallowable costs associated with:

- a. \$2,493,784 paid to linguists without valid language proficiency testing results.
- b. \$505,717 paid for linguists and a Regional Program Manager without valid background investigations.
- c. \$661,885 paid for linguists without signed non-disclosure agreements on file prior to working under the contract.
- d. \$924 in travel costs for incorrect mileage, mileage and per diem rates, and costs not associated with official business travel.
- e. \$33,421 in unreasonable costs the DEA paid to another linguist contractor for Arabic linguists due to the Contracting Officer's inadequate review of contractor rates and failure to ensure the rates were fair and reasonable.

DEA RESPONSE

DEA concurs with the recommendation. The Office of Acquisition and Relocation Management (FA) will review the net unallowable cost of \$3,695,731 to identify all potential remedies available. If unallowable costs can be remedied in accordance with equitable contract procedures and policies, DEA will endeavor to pursue them.

Recommendation 3. Ensure corrective actions are taken to address deficiencies related to language proficiency and security requirements for linguists:

- a. Establish procedures to ensure that linguists working under a DEA linguist contract have the proper language proficiency test results; evaluate the existing language proficiency testing to determine whether other testing is better suited to assess the skills needed by linguists to perform the work under the contract; and develop guidance for what situations warrant language proficiency waivers.
- b. Ensure that all linguists sign a non-disclosure agreement prior to working on the contract and consider including the language identified in 5 U.S.C. § 2302(b)(13) in all non-disclosure agreements.
- c. Formalize procedures to ensure that all linguists who work under the contract have favorably adjudicated background investigations and ensure that waivers are tracked to confirm that no lapses occur while background investigations are in process.
- d. Develop procedures to inform Conduit about security developments including issuance of waivers and the status of linguist background investigations.
- e. Ensure that linguists working under DEA linguist contracts are issued PIV cards that meet the requirements defined in FIPS Publication 201-2 and HSPD-12.
- f. Develop procedures to ensure that the Contract Personnel Reports Conduit is required to send to the DEA are reviewed, tracked, and maintained in accordance with HSPD-12 and the contract terms and conditions.

DEA RESPONSE

DEA concurs with the recommendation. The Special Operations Division (SOD) has already taken actions to address deficiencies related to language proficiency and security requirements for linguists. In February 2017, SOD began tracking language proficiency test results, linguist background investigations and waivers, and has also started monitoring non-disclosure agreements. Further, SOD has implemented procedures to communicate security developments with Conduit. FA has also developed procedures to confirm that the Contract Personnel Reports are reviewed, tracked, and maintained properly by DEA.

To further address deficiencies, DEA will update its policy to mandate a review of all task orders to ensure that travel costs are documented and approved in accordance with Federal Travel Regulations, and coordinate with FA to develop policies and procedures in which PIV cards are issued to linguists from the field divisions.

Recommendation 4. Ensure corrective actions are taken to address weaknesses related to contract administration and oversight:

- a. Ensure that the Contract Administration Plan is enforced in its entirety and ensure the completion of the Contract Administration Checklists as identified in the plan.
- b. Review all task orders issued under the contract where the DEA paid travel costs to ensure the travel costs were properly reimbursed.
- c. Review the COR Designation Letter and revise as necessary to ensure the COR's responsibilities are properly documented.
- d. Evaluate whether more than one COR for the eight regional linguists contracts would result in better management and oversight, develop policies and procedures to ensure the COR performs the responsibilities as delegated, and ensure other responsibilities assigned to SOD for the linguist program are documented and followed.
- e. Ensure that Conduit submits final invoices in accordance with the contract terms and conditions, including notifying the COR when a task order is completed for the contract.
- f. Ensure that Conduit develops and implements an automated task order entry and tracking system as required by the contract.
- g. Ensure that the TMs and COR complete the three Federal Acquisition Courses required by the DOJ for all levels of FAC-COR and provide documentation to support completion of these courses.
- h. Ensure that TMs complete documentation as required by the contract and the DEA Contract Administration Plan and communicate regularly with the COR and the Contracting

Officer, which includes notifying the Contracting Officer prior to any change in the TM assignments.

i. Ensure the Contracting Officer completes a performance assessment report in CPARS for the current year of the contract and completes a final performance assessment report in CPARS upon completion of the contract next year.

j. Develop procedures to ensure that the Contracting Officer completes the performance assessment report in CPARS regardless of whether a notification is received from CPARS.

k. Ensure that Customer Satisfaction Surveys are provided to and completed by Case Agents, and are collected by TMs on a monthly basis.

l. Coordinate with Conduit to ensure Case Agents complete and submit End of Case Surveys to the DEA and Conduit to provide feedback and identify any areas of improvement.

m. Develop controls for contract management to ensure contract requirements are met and applicable laws and regulations are followed.

n. Require Conduit to submit Administrative Reports that contain all the data required and develop procedures to ensure deliverables are submitted and reviewed for accuracy and completeness in accordance with the contract terms and conditions.

DEA RESPONSE

DEA concurs with the recommendations listed in recommendations 4a through 4n. Since the issuance of OIG's draft report, DEA contracting office has held weekly meetings with the Office of Compliance to examine the underlying issues identified. As a result, DEA is currently preparing a mitigation strategy that includes updates to policy, training, and oversight. As this strategy is implemented, DEA will provide the OIG with updates on each of these matters as they relate to the Conduit Linguist Services contract and these recommendations.

Recommendation 5: Ensure corrective actions are taken to address contract quality assurance:

a. Develop its own QASP for the contract to assess the quality and timeliness of services performed by the contractor.

b. Develop a QA program and procedures for reviewing and validating linguist work to ensure the work is reliable, consistent, and accurate.

c. Establish procedures to ensure the COR and TM review Conduit's QA plan on a regular basis, including any updates or revisions, and ensure that Conduit is completing QA responsibilities in accordance with its plan.

d. Ensure that the TMs notify the Contracting Officer whenever Conduit is unable to satisfy a task order requirement and that the Contracting Officer enforce the contract

requirements and address any issues of non-compliance, including documenting the non-compliance in CPARS.

e. Determine whether other methods should be used to obtain linguists for languages it requires that are not the main languages required by the contract, and develop policy and procedures for obtaining linguists fluent in those languages if contractors are unable to meet language requirements, such as utilizing the FBI's NVTC, to reduce the risk of the DEA's requirements not being met.

DEA RESPONSE

DEA concurs with the recommendation. DEA will work to develop a Quality Assurance Surveillance Plan (QASP) to address contract quality, and assess the quality and timeliness of services performed by the contractor based on the terms and conditions of the contract. Procedures will be established to ensure Conduit's QA plan is reviewed on a regular basis. DEA concurs that the Contracting Officer should be notified by the Program Office when the Agency is aware of non-compliance. However, DEA believes that the notification should be submitted through the COR instead of the TM. DEA will review other methods and procedures for identifying which linguists to support "hard to find" languages, and will develop policy and procedures for obtaining such services. Upon completion of these tasks, DEA will provide OIG supporting documentation to reflect its efforts.

Recommendation 6. Ensure Conduit consults with the DEA TMs and Case Agents prior to changing linguist assignments, and puts in place procedures to limit these changes as much as possible to prevent disruption of law enforcement investigations and ensure continuity of services.

DEA RESPONSE

DEA concurs with the recommendation. Conduit and SOD have been in communication regarding changes in linguist assignments. Procedures regarding these changes will be identified and incorporated to prevent disruption of law enforcement investigations.

Recommendation 7. Ensure corrective actions are taken to address compliance with the SCLS:

a. Ensure Conduit works with the DOL to calculate the fringe benefits Conduit should have paid to linguists in accordance with the SCLS and DOL WD number 2012-0012 and ensure that Conduit pays those benefits to all affected linguists who worked under the contract.

b. Ensure Conduit works with the DOL to ensure it properly paid fringe benefits to linguists who worked on its other DEA regional linguist contract number D.JD-13-C-0003.

- c. Ensure Conduit keeps adequate records in compliance 29 C.F.R. § 4.6(g)(1) and work with Conduit to verify the correct total of employee linguists and independent contractor linguists who worked under the contract.**
- d. Work with Conduit to determine the proper price adjustments Conduit should have received, remedy any excess costs paid to Conduit for the improperly approved increases to G&A and profit, and remedy any accompanying costs paid to Conduit for linguists who did not receive fringe benefit cash payouts.**
- e. Ensure that Conduit submits the necessary documentation to support its requests for price adjustments.**
- f. Ensure the memorandum to the file for the price adjustments includes the Contracting Officer's methodology for determining how a price adjustment is accurate and valid, and in accordance with the DOL WD and the FAR.**
- g. Review the PACT User Guide and Department of Navy Desk Guide for Service Contract Price Adjustments to identify best practices and use them to develop DEA-specific guidance for use by contracting officials administering DEA service contracts, including reviewing and approving price adjustments.**

DEA RESPONSE

DEA concurs with the overall intent of the recommendation, but requests a modification to 7a-c.

DEA has no enforcement mechanism to ensure that Conduit makes proper payments to "individual employees" or to ensure proper payments were made to "affected employees" as required by the Department of Labor (DOL), Wage and Hour Division. OIG recommendations 7a and 7b are outside DEA's area of authority. DEA can, however, make this request of Conduit and report back to the OIG on what Conduit provides. With respect to 7c, DEA can remind Conduit of the 29 CFR reporting requirement, but cannot itself "verify" the correctness" of Conduit's report. The 29 CFR requires the contractor to only "provide" these documents to authorized representatives within the DOL Wage and Hour Division.

In response to the remainder of this recommendation to address compliance with SCLS, DEA has already completed a modification to re-adjust prices. DEA the total of improperly paid costs and will remedy those excess costs in accordance with the established procedures to remedy unallowable costs. DEA is providing training to its contracting staff regarding the Service Contract Act and relevant price adjustments. Once the training is completed, DEA will provide OIG a copy of the training documentation. Lastly, DEA will review the PACT User Guide and the Department of Navy Desk Guide for Service Contract Price Adjustments for administering DEA service contracts and approving price adjustments,

Recommendation 8. Ensure the Contracting Officer adequately reviews contractor rates to ensure that the rates are fair and reasonable for any order issued to another linguist contractor, which could include using GSA FSS contracts to meet the DEA's needs.

DEA RESPONSE

DEA concurs with the recommendation. The Contracting Officer will review the contractor rates to determine if they are fair and reasonable in accordance with applicable FAR regulations and the GSA FSS contracts. Upon completion of the review, DEA will provide OIG the documented results.

Recommendation 9. Work with Conduit to review its fixed billing rate calculations and ensure its calculations are accurate and only include staffed positions.

DEA RESPONSE

DEA concurs with the recommendation. The COR will review the contract fixed billing rate calculations to ensure the contractor's calculations are accurate and only include staffed positions. Once completed, DEA will provide OIG the documented results.

Recommendation 10. Ensure Conduit notifies the DEA of staffing changes that affect management and quality control of the contract.

DEA RESPONSE

DEA concurs with the recommendation. The COR will ensure that the contract language requires that Conduit notify the COR when staffing changes occur that may affect management and control of the contract.

Recommendation 11. Develop a methodology and procedures for solicitation development that accurately describes the need to be filled through service contracting. This may include a review of the contract terms for each location to determine whether: (1) the minimum number of linguists are accurate, (2) the minimum number of linguists reflect the actual need of the locations, (3) the contract terms should allow for reimbursement of travel costs for certain situations, and (4) there is a more efficient method to provide linguists services to smaller locations.

DEA RESPONSE

DEA concurs with the recommendation. DEA will review its current methodology used to determine the linguist needs for each location. DEA will determine whether improvements are warranted in the form of contract terms or better education and communication regarding the methodology and its application. DEA will share the results of this assessment and any actions taken.

Thank you for the opportunity to respond and address the OIG's concerns. If you have any questions regarding this response, please contact DEA's Audit Liaison Team at 202-307-8200.

CONDUIT LANGUAGE SPECIALISTS, INC.
RESPONSE TO THE DRAFT AUDIT REPORT

Conduit Language Specialists DoJ/OIG Audit Response
DRAFT AUDIT REPORT – LIMITED OFFICIAL USE



October 04, 2017

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1120 Lincoln Street, Suite 1500
Denver, CO 80203

RE: Department of Justice (DOJ) Office of the Inspector General's (OIG) audit of the Drug Enforcement Administration's (DEA) contract number DJD-13-C-004, awarded to Conduit Language Specialists, Inc.

Dear Mr. Sheeren:

Please find a copy of our responses to the working draft of the subject audit. Usually we welcome audits since they provide us with helpful management consulting expertise and assist us to improve our mission performance. However, we were very confused with this audit and the method that it was conducted. We have tried to categorize our generic concerns:

- 1) Treating rare occurrences as a common practice: Reading through the audit, we would appear to rarely accomplish anything correctly. But to provide some perspective, here are the summary statistics for the activity on the contract from Nov 2012 to date:
 - Cases that we have supported = 129
 - Task Orders we have supported = 954
 - Labor hours to support these cases = 850,339.75 billed hours
 - Labor hours spent supporting US Attorneys/Testimony = 1,176.5 hoursAll efforts performed with a satisfactory rating from DEA

Yet looking through the audit, none of these statistics is addressed and there is no grasp of the scope of the activities being performed and managed jointly by the DEA and Conduit Language Specialists. Any problem or mistake, no matter how small, is a matter of concern. But in perspective, most of the operational complaints deal with a few tasks orders and a couple of negative comments. On a percentage basis, that is well less than 1% of the operational activities. Make no mistake; we are not perfect by any means. Yet reading the write up and how these few issues are characterized, one would imagine that the success of the entire DEA program was at risk.

DRAFT AUDIT REPORT – LIMITED OFFICIAL USE
Conduit Language Specialists DoJ/OIG Audit Response

Conduit Language Specialists DoJ/OIG Audit Response
DRAFT AUDIT REPORT – LIMITED OFFICIAL USE

- 2) Misstatements/Mischaracterizations: Throughout the audit, we commonly ran into the problem where the auditors wanted a specific custom report that we would have difficulty supplying in expeditious timeframe. Even though the data did exist and could be retrieved in the format that was desired, this inability for instant reports was later characterized into an inability to supply the data at all or that we did not collect the data. We brought up this point repeatedly during the initial feedback session. To their credit, the auditors removed most of these mischaracterizations. However, some remain and they are identified in the following sections;
- 3) Misunderstanding/Misapplication of Contract T&Cs/IRS/FAR regulations: There are numerous instances where erroneous conclusions arise due to misunderstanding of the FAR and Government contract principles, selective partial reading of regulations, or misapplication of regulations to situations that do not exist. We have tried to point out these errors in the detailed responses that follow;
- 4) Conflating causes and responsibilities: There are instances where Conduit is included in the blame for not performing functions that are reserved for DEA to perform. The obvious example is the signing by the linguist of the *Reporting Responsibilities-NonDisclosure Agreement* form. However, there are also numerous operational impacts caused by the security clearance process and the associated policy of rapid decertification of linguists that do not continuously work for DEA; and,
- 5) Reluctance and unwillingness to update statement/conclusions despite evidence to the contrary: When issues were identified, we provided documentation that should have addressed the concern. Sometimes we have provided documentation many times. Yet some of these findings continue cite “facts” that have been proven to be untrue with documentation and other evidence. Again, we have pointed out these instances in our detailed responses.

This audit is also unusual since the organization of the issues and finding are not always clear and, in many cases, are repetitive with variations. We have tried to identify those issues, assertions and misstatements of facts by identifying the location of the sections of the draft audit report and restating it in full text. Our references are keyed to the Draft Audit Report (undated) that was released on September 20, 2017. However, the Finding number designations are arbitrary on our part since none exist in the draft audit report.

Sincerely,

Diana Autenrieth
President
Conduit Language Specialists, Inc.

Victoria Villegas-Myers
VP/General Manager
Conduit Language Specialists, Inc.

DRAFT AUDIT REPORT – LIMITED OFFICIAL USE
Conduit Language Specialists DoJ/OIG Audit Response

Page 2 of 22 Pages

Conduit Language Specialists DoJ/OIG Audit Response
DRAFT AUDIT REPORT – LIMITED OFFICIAL USE

Finding #L1) Linguist Proficiency [page 7, 3rd paragraph]

The Audit claims ... *DEA allowed linguists to work under the contract without valid language proficiency results, completed background investigations, or signed non-disclosure forms. [Intro page i] ... We reviewed documentation for 35 out of 490 linguists and determined that 29 did not have valid language proficiency results, 4 did not have completed background investigations or waivers, and 13 did not have signed non-disclosure agreements prior to starting work on the contract. [Intro page i & Page 7 paragraph 3]*

This statement is misleading since it does not specify that they are referring to specific “third party” certifications and those that were assigned at the start of the contract at the beginning of the startup transition period. All linguists assigned to the contract efforts had passed previous linguist proficiency testing exams.

Finding #L2) Linguist Proficiency [page 7, 3rd paragraph]

The Audit state that ... *Conduit billed and the DEA paid an estimated \$2,493,784 for the 29 linguists without valid language certifications. Therefore we question the \$2,493,784 as unallowable. According to DEA officials, because the DEA accepted the services provided by Conduit related to these 29 linguists it is their position that the DEA in essence waived the contract requirement related to language proficiency. However, the DEA did not provide us with any documentation supporting that the DEA was aware of the non-compliance with the contract requirements when it accepted and paid for the services. Therefore, we do not believe that the DEA has shown that it received what it contracted and paid for and we question the \$2,493,784 as unallowable.*

AND Linguist Proficiency Wavier [page 11 3rd paragraph]

Therefore, we recommend the DEA remedy the \$2,493,784 paid for linguists without valid language proficiency testing results. We also recommend the DEA establish procedures to ensure that linguists working under a DEA linguist contract have the proper language proficiency test results; evaluate the existing language proficiency testing to determine whether other testing is better suited to assess the skills needed by linguists to perform the work under the contract; and develop guidance for what situations warrant language proficiency waivers.

Currently all third-party certifications have been completed for all linguists performing on contract.

Leaving aside the correction made in previous paragraphs regarding this issue, the auditors attempt to disallow costs because they feel that the DEA did not receive the contracted services. However, this audit ignores the fact that this requirement is just one of many requirements and that the quality of the services received is determined by the Contracting Officer and his/her Technical Representatives. The work product is characterized by a variety of important factors and metrics (e.g., timeliness, accuracy, data analysis, investigative deconfliction, and et.al.) that is specified in many other parts of the contract. To insist that the DEA Contracting Officer, DEA Agents and Technical Representatives/ Task Monitors were unable to judge the quality of the work product discredits the expert government officials that understand this type of investigation.

DRAFT AUDIT REPORT – LIMITED OFFICIAL USE
Conduit Language Specialists DoJ/OIG Audit Response

Conduit Language Specialists DoJ/OIG Audit Response
DRAFT AUDIT REPORT – LIMITED OFFICIAL USE

Furthermore, our specialized in-house testing has proven successful at identifying those qualified individuals and has been informally accepted by DEA. As of this inquiry, and to the best of our knowledge, the accuracy of our linguist transcripts, summaries and data analysis has held up successfully under 850,339.75 labor hours (an excess of 129 investigations and 1,176.5 hours of Court testimony) and court scrutiny.

Relying only on third party academic proficiency certification as the only standard of individual linguistic capability for Title III investigations and as a standard of insuring accuracy for translations in this realm, would only undermine the mission of DEA and any agency that utilizes this form of investigation.

Finding #L3) Linguist Proficiency [page 7, footnote 8]

The Audit claims that *Conduit provided an inaccurate and incomplete listing of linguists who worked under the contract. Conduit explained that a list of linguists who worked under the contract was not readily available and developing the list would be very labor intensive.*

This statement is incorrect and mischaracterizes what was stated to the Auditors. Precisely, we informed the Auditors that this data was recorded in the Payroll and Timecard system and cleared list of linguists. For this we would have to generate a special report to provide contract specific year-to-date totals for each linguist and would take more time. Somehow this was interpreted that we could not provide the data.

Finding #L4) Linguist Proficiency [page 7, old footnote 10, new footnote 9]

The auditors claim that *...This calculation was based on the approximate total hours worked for these 29 linguists and the average cost per hour for each linguist. The average cost per hour was based on costs for both field divisions for Spanish and common languages from all years of the contract. Due to limitations related to price adjustments, which we discuss in the Service Contract Requirements and Contractor Payments section of this report, we could not determine the exact amount Conduit billed DEA for these 29 linguists.*

This finding is not logical since each invoice lists the billing rate for the linguists covered under that invoice. Additionally, these billing rates are easily retrieved from the contract CLIN rates. For linguists that worked for more than one contract pricing period, the billing rate for each period is easily available (on each invoice and also on the contract) as is the number of hours worked during that time frame.

Finding #L5) Linguist Proficiency Waivers [page 8, ^{2nd} paragraph]

This audit claims that *...this disregard for contract requirements affects the credibility and reliability of linguist work, which increases the risk of negatively impacting DEA investigations.¹¹ We believe it is important that the DEA exercises appropriate controls over linguists to ensure the credibility and prosecutions reliability of the language translations and transcriptions used by the DEA.*

DRAFT AUDIT REPORT – LIMITED OFFICIAL USE
Conduit Language Specialists DoJ/OIG Audit Response

Page 4 of 22 Pages

Conduit Language Specialists DoJ/OIG Audit Response
DRAFT AUDIT REPORT – LIMITED OFFICIAL USE

Footnote 11: We did not review, as part of this audit, how translations and transcriptions are used in connection with legal proceedings. However, in our judgment, any negative impact to investigations could also increase the risk to legal proceedings.

This statement and finding is misleading and it implies that there are no other controls or quality checks on the linguist work products other than this single once every five year proficiency test, and that it is the only quality criteria. Such an emphasis on this singular aspect of linguist capability over simplifies and it ignores the number of reviews and other quality checks that all work products are subjected to. Furthermore, the statement regarding jeopardizing legal proceeding is widely speculative and not based on any real data. It ignores the reality of the past performance, of all the thousands of transcripts and other associated legal paperwork and hours of testimony, none of which to our knowledge have been successfully challenged in court to date.

Finding #L6) Linguist Proficiency Waivers [page 9, 3rd and 4th paragraphs]

According to Conduit officials, its language proficiency testing provider as identified in the contract only tests proper grammar and language skills. However, knowledge of slang, street vernacular, colloquialism, and idiomatic expressions is critical to work as a linguist under the contract. According to Conduit, it uses two tests to evaluate linguists grammar and language skills in these areas: Conduit's [REDACTED] certification tests linguists in the skills of listening, writing, reading, comprehension, translation, computer knowledge, slang-colloquialism, typing, and speaking prior to being hired and (2) Conduit's International Organization for Standardization (ISO) Transcript/Summary proficiency assessment re-tests the linguists in listening, writing, accuracy, comprehension, translation, and slang-colloquialism on an annual basis. However, the DEA has not reviewed or approved either test. Additionally, Conduit uses these two tests to assess proficiency in Spanish only. Conduit uses a professional organization from the list included in the contract to test languages other than Spanish.

While the contract required language proficiency results from a professional organization, such as those listed in the contract, we believe the DEA should review Conduit's tests to determine whether they should be used to test Spanish linguists. The DEA should also address whether using other testing would be better suited to assess the skills linguists need to work under the contract.

Conduit is more than happy to provide the details, methodology and independent reviews of our Spanish linguist testing process to the DEA for review. We feel confident that the standards above those required on third party tests will meet with DEA approval.

Finding #L7) Linguist Security [page 12, 2nd paragraph]

We reviewed documentation from DEA Security Programs for our sample of 35 linguists that we previously discussed and found that:

DRAFT AUDIT REPORT – LIMITED OFFICIAL USE
Conduit Language Specialists DoJ/OIG Audit Response

Conduit Language Specialists DoJ/OIG Audit Response
DRAFT AUDIT REPORT – LIMITED OFFICIAL USE

- *The Regional Program Manager (who also worked as a linguist) never had a completed background investigation prior to working or during the years he worked under the contract, from 2012 to 2014;*
- *The Denver Field Division Supervisor (who also worked as a linguist) never had a completed background investigation until 4 years after she started working under the contract; and*
- *Two linguists, in addition to not having the required language proficiency testing, had approved waivers that lapsed while their background investigations were in process, but they continued working under the contract.*

Conduit has repeatedly explained that these statements are untrue. Please refer to our most recent email of September 7, 2017 which again provided documentation that Conduit followed protocol. This section implies we knowingly placed individuals on assignment without clearance verification or authorization. In all cases any linguist had to receive security approval to work on the contract and no linguist was placed on contract without that approval. Linguists cannot even be badged and enter the wireroom without their approvals being current and in the system.

Our most recent email on this topic is included as a reminder and for the purposes of privacy the individual names have been omitted and replaced by their work title (all changes are in red):

From: Diana Autenrieth [REDACTED]
To: [REDACTED] @usdoj.gov>
CC: Vicky Myers [REDACTED],
[REDACTED] (OIG)"
[REDACTED] @usdoj.gov>,
[REDACTED] (OIG)"
[REDACTED] @usdoj.gov>
Subject: Re: Linguist Security Sample detail
Date: Thu, 7 Sep 2017 18:12:20 +0000

Thank you, [REDACTED].

As mentioned in our exit conference, prior to DEA Regional Divisions of 2012 and SOD centralizing the security process, all waivers and clearances were handled at each separate division.

Perhaps this is why proof or validation was not found for either Regional Program Manager or Supervisor #1 who date back to 2004. In the past approvals came via phone call from each division or email from divisional security officers or specialists.

Our records reflect Supervisor#1 had an original DEA waiver date of 12/11/2004 out of the Denver Division. [REDACTED] is the Security Officer for Denver and he might have more information on Supervisor #1 clearances. Although, our previous Task Monitor [REDACTED], who has long since retired, would have handled it back in 2004. Here is [REDACTED] contact information. [REDACTED] @usdoj.gov Office: [REDACTED].

DRAFT AUDIT REPORT – LIMITED OFFICIAL USE
Conduit Language Specialists DoJ/OIG Audit Response

Conduit Language Specialists DoJ/OIG Audit Response
DRAFT AUDIT REPORT – LIMITED OFFICIAL USE

Regional Program Manager, according to our record has a DEA notification date of 8/5/2004. While working applied to be a DEA agent and received another DEA clearance in 2007. I have enclosed a note from Security Specialist [REDACTED] for Phoenix Division attesting to this. If you require more information please contact: [REDACTED]@usdoj.gov I have included communications between Security Officer's and other authorized DEA personnel granting Regional Program Manager access to DEA wire-rooms. As you will note from communications requesting access, the mention of Regional Program Manager clearance or access not being valid was never brought to our attention and we were given the green light to proceed.

Linguist #1 We have a notification date of waiver on July 29, 2015. I have included a copy of notification from [REDACTED] for your perusal. This individual was not assigned to wire-room until September of 2015.

Linguist #2: We have a notification date of waiver of June 22, 2015. I have included a copy of notification for your perusal. This individual was not assigned to wire room until September of 2015.

I hope these communications highlight the fact that Conduit consistently follows security protocols established by our customers. In our call you were kind to mention that this section of report was directed to DEA.

Our impression is that your report implies Conduit knowingly placed uncleared individuals on assignment.

Again, I hope these facts set before you remove any doubt, and you are able to clarify this your report.

Respectfully,

- Diana

Finding #L8) Linguist Non-Disclosure Certifications [page 13, 4th paragraph]
We found that 13 of the 35 linguists in our sample did not have signed non-disclosure agreements on file prior to working under the contract.

AND Linguist Non-Disclosure Certifications [page 14, 1st paragraph]
... we remain concerned by the DEA's disregard for contract requirements and we do not believe that the DEA has shown that it received what it contracted and paid for. Therefore, we question the \$661,885 as unallowable and recommend the DEA remedy the \$661,885 in unallowable costs for linguists without signed non-disclosure agreements on file prior to working under the contract.

This entire finding is based upon an improper understanding of the contract and DEA procedures. As Conduit has repeatedly explained to the auditors (and the Auditors concurred with) we have been explicitly informed that this administration of signing of 487's non-disclosure agreements is a duty that falls on DEA and is not a duty that Conduit has control over. This seems to be due to the requirement that the signing witness to this form must be DEA agent or authorized personnel of the government and not the contractor.

DRAFT AUDIT REPORT – LIMITED OFFICIAL USE
Conduit Language Specialists DoJ/OIG Audit Response

Page 7 of 22 Pages

**Conduit Language Specialists DoJ/OIG Audit Response
DRAFT AUDIT REPORT – LIMITED OFFICIAL USE**

As confirmed in the previously submitted email below:

From: "[REDACTED]" [REDACTED]@usdoj.gov>
Subject: Approval/DEA-487
Date: February 22, 2017 at 3:57:26 PM EST
To: "[REDACTED]" [REDACTED]@usdoj.gov>
Cc: Conduit Security Officer,
"[REDACTED]" [REDACTED]@usdoj.gov>

Hi [REDACTED]

I just got off the phone with [REDACTED] and wanted clarify the Approval and DEA-487 requirements.

When a linguist reports to work, either the wire room Agent, DSO or any DEA Representative should sign the DEA Approval form (entering the EOD date) and have the linguist sign the DEA-487 (DEA Rep needs to witness that form). This should happen right before the linguist begins work. There is no reason to do it in advance or have the linguist make a special trip to sign the forms. The Approval should have the same date as the DEA-487. Those documents, once completed should be sent to SOD.

If you have any questions, feel free to call me.

Thank you,
[REDACTED], Program Analyst
Special Operations Division, OSOS

This is also confirmed in the contract language:

Prior to the commencement of any work for DEA, the contractor's employee(s) shall declare in writing (utilizing form DEA-487, Reporting Responsibilities/NonDisclosure Agreement, described above in Paragraph E-1a) that he or she intends to be governed by and comply with Federal laws prohibiting the disclosure of information obtained during the course of their work for DEA. The declaration will be witnessed and accepted by a duly authorized DEA representative (generally the COTR/TM or a DEA Security Officer) on behalf of the Administrator, DEA. [EXHIBIT J-E-8, DEA-2852.204-84 PUBLIC TRUST POSITIONS, Section 1.G.2.]

Finding #COR1) COR Duties and Responsibilities [page 18, 1st paragraph]

While discussing the COR's role and responsibilities, the auditors stated that We examined all 47 invoices related to a sample of 15 task orders totaling \$608,848, out of 1,977 task orders totaling approximately \$31 million. We found 4 of the 47 invoices included travel expenses. We determined that Conduit improperly billed some travel expenses, yet all of these invoices were still approved by the DEA. Based on this review, we identified \$924 of unallowable travel costs due to incorrect mileage and mileage rates, incorrect per diem rates, and costs not associated with official business travel. Thus, we

**DRAFT AUDIT REPORT – LIMITED OFFICIAL USE
Conduit Language Specialists DoJ/OIG Audit Response**

Page 8 of 22 Pages

Conduit Language Specialists DoJ/OIG Audit Response
DRAFT AUDIT REPORT – LIMITED OFFICIAL USE

recommend the DEA remedy the \$924 in unallowable travel costs for incorrect mileage, mileage and per diem rates, and costs not associated with official business travel. We also recommend the DEA review all task orders issued under the contract where the DEA reimbursed Conduit for travel costs to ensure the travel costs were properly reimbursed.

Conduit was never notified or advised of the specifics of any improperly billed travel expense nor were we asked to correct invoices or reimburse DEA for unallowable travel expenses. We cannot comment on this claim until we know which invoices are in question and what issues are involved.

Finding #C3) Unmet Contract Requirements [page 18, 3rd paragraph]

...we found that Conduit did not notify the COR when a task order was completed.

Conduit notified the Field Division TMs when the task orders were complete, in accordance with instructions from DEA. Conduit also responds to the modification to close each completed task order [REDACTED] and for every task order that is received. The Monthly Administrative Report (with all task order activity for the month that includes all closed task orders) is sent to Contract Specialists [REDACTED], Assistant Administrative Officer [REDACTED], RegionalCORmailbox@usdoj.gov and Task Monitor [REDACTED].

Finding #C4) Unmet Contract Requirements [page 18, 3rd paragraph]

We also found that Conduit did not submit final invoices in accordance with the contract, which stated that the final invoice must be marked "Information Copy – Final Invoice."

The clause associated with this requirement is **DEA-2852.242-72 FINAL INVOICE AND RELEASE OF RESIDUAL FUNDS (MAY 2012)**. This requirement applies to the end of the entire contract during contract closeout. Completion invoices for each task order are marked "FINAL INVOICE FOR TASK ORDER XXX" since August of 2016.

Finding #C5) Unmet Contract Requirements [page 18, 3rd paragraph]

...the contract required that Conduit have an automated task order entry and tracking system with the capability to capture and track the status of subsequent task orders. Conduit did not have this system in place.

Conduit has had this automated tracking system in place since December 2015. On a recent email attached between Conduit's Administrative expeditor and COR [REDACTED], we were given the official go ahead from DEA to deliver reports using more features from upgraded system. Email to COR [REDACTED] to Conduit Administrative Manager; Conduit Monthly DEA Administrative Reports Question; date September 5 2017

**Conduit Language Specialists DoJ/OIG Audit Response
DRAFT AUDIT REPORT – LIMITED OFFICIAL USE**

Finding #C6) Contract Reports and Deliverables [Page 23, 2nd paragraph]

However, we found the DEA has never completed any contractor performance assessment reports for the contract.

We are confused since the current online status regarding these reports shows them as being completed [https://cpars.cpars.gov/cpars/app/statusreportlist_input.action#]:

| Contract Number | Contract Status | Contract Due Date | Contract Period of Performance | Status | Date Completed |
|------------------------|------------------------|--------------------------|---------------------------------------|---------------|-----------------------|
| <u>DJD13C0004</u> | CURRENT | 02/26/2018 | 10/31/2012 - 10/30/2013 | Completed | 02/07/2014 |
| <u>DJD13C0004</u> | CURRENT | 02/26/2018 | 10/31/2013 - 10/30/2014 | Completed | 04/14/2017 |
| <u>DJD13C0004</u> | CURRENT | 02/26/2018 | 10/31/2014 - 10/30/2015 | Completed | 04/17/2017 |
| <u>DJD13C0004</u> | CURRENT | 02/26/2018 | 10/31/2015 - 10/30/2016 | Completed | 04/14/2017 |
| <u>DJD13C0004</u> | CURRENT | 02/26/2018 | 10/31/2016 - 10/29/2017 | Initiated | n/a |

Finding #C7) Contract Reports and Deliverables [page 23, last paragraph]

We recommend the DEA ensure that Customer Satisfaction Surveys are provided to and completed by the Case Agents, and are collected by the TMs on a monthly basis. We also recommend the DEA coordinate with Conduit to ensure Case Agents complete and submit End of Case Surveys to the DEA and Conduit to provide feedback and identify any areas of improvement.

Conduit fully agrees with this need and always attempts to receive post performance feedback from the Agents. While Agents may not complete the formal reviews, we do attempt to elicit any feedback from the Agent. Usually this feedback is verbal because the Agent does not have to take the time to complete the survey paperwork.

Finding #C8) Contract Reports and Deliverables [Page 24, Last paragraph]

We reviewed an Administrative Report submitted by Conduit and found it followed the sample report included in the contract. As a result, Conduit's report was also missing required information. The report we reviewed did not contain expenditures and hours per linguist by task order for the month reported, a summary of the total number of hours worked during the month per language, a year-to-date running total, a brief description of the work performed during the reporting month for each task order, or any recruitment by Conduit or changes in Conduit's policies.

Conduit should have validated that the sample report on the contract met all the reporting requirements. This validation will be completed in the future.

Since this has been brought to our attention, here is the precise status of the items mentioned as missing from the report:

**DRAFT AUDIT REPORT – LIMITED OFFICIAL USE
Conduit Language Specialists DoJ/OIG Audit Response**

**Conduit Language Specialists DoJ/OIG Audit Response
DRAFT AUDIT REPORT – LIMITED OFFICIAL USE**

- 1) *Expenditures and hours per linguist by task order for the month reported;*
Added starting with Sep 10, 2017 report
- 2) *A summary of the total number of hours worked during the month per language;*
This has always been included in the report
- 3) *A year-to-date running total;*
Added starting with Sep 10, 2017 report
- 4) *A brief description of the work performed during the reporting month for each task order;*
Added starting with Sep 10, 2017 report
- 5) *Any recruitment by Conduit;*
This has always been included in the report. We will add a statement that no changes have occurred when there is no activity.
- 6) *Any changes in Conduit's policies.*
This has always been included in the report. We will add a statement that no changes have occurred when there is no activity.

Finding #C9) Contract Reports and Deliverables [Page 25, 1st paragraph]

We asked Conduit about the missing information from the financial statement section and for a list of linguists who worked under the contract and the hours worked by each individual, but Conduit did not provide this data. Conduit officials explained that its systems do not track that information and, therefore, it is not readily available. According to FAR 52.222-41, Service Contract Labor Standards (SCLS), contractors performing work subject to the SCLS are to keep and maintain a record for each employee, subject to the SCLS, including daily and weekly hours worked by each employee for 3 years from the completion of the work.

This statement is incorrect and mischaracterizes what was stated to the Auditors. Precisely, we informed the Auditors that this data was recorded in the Payroll and Timecard system. The invoices for each task order invoice has attached a copy of the timecard data for that task order for the applicable period of the invoice. We would have to generate a special report to provide contract specific year-to-date totals for each linguist. We supplied data, payroll records and explanation of how to understand the payroll data. There is no basis for the claim that this data was not provided.

Finding #QA1) Contract Quality Control [Introduction [Page ii] and Contract Quality Control [Page 25, last paragraph and Page 26, 2nd paragraph]

Quality Assurance - Despite the DEA's responsibility for QA, the DEA placed sole responsibility for QA on Conduit. Although required by the contract, Conduit officials acknowledged that they had not followed or enforced Conduit's QA plan to ensure adequate QA throughout all areas of contract performance. [Intro page ii]

...we determined the DEA relied solely on Conduit to perform all QA under the contract and failed to ensure Conduit adequately performed QA in accordance with its QA Plan. Consequently, substandard

**DRAFT AUDIT REPORT – LIMITED OFFICIAL USE
Conduit Language Specialists DoJ/OIG Audit Response**

Conduit Language Specialists DoJ/OIG Audit Response
DRAFT AUDIT REPORT – LIMITED OFFICIAL USE

linguist work could negatively impact the success of the DEA's mission to bring to justice individuals and organizations involved in the manufacture or distribution of controlled substances destined for or in the United States. [Page 25, last paragraph]

...we determined that the DEA did not develop a government QASP for the contract and performed limited QA for the contract. According to their delegation letter, TMs were responsible for establishing a surveillance plan that would ensure receipt of the quality and quantity of services required by the contract. DEA's Contract Administration Plan for the contract also stated that TMs were responsible for reviewing and accepting work products; receiving, inspecting, or approving interpreting session notes; and delivery of translations and transcriptions. Additionally, the TMs could have arranged for validation of original translation work on an as-needed basis. We found no evidence that the TMs completed any of these items, including reviewing translations. [Page 26, 2nd paragraph]

The actual QC process is a function of Conduit Quality Assurance Plan as now and as it has been in the past. Multiple reviews are performed internally after the linguist completes the transcription of call. While Agents are not a part of this process, and the DEA did not create a matching quality assurance surveillance plan, the quality control activities were still performed. Currently the Quality Control Reporting Checklist is current and delivered monthly.

We must restate and reemphasize that the statement regarding jeopardizing legal proceeding is widely speculative and not based on any data. It ignores the reality of the past performance, of all the thousands of transcripts and other associated legal paperwork and testimony, none of them have been successfully challenged in court.

Finding #QA2) Contract Quality Control [Page 28, 3rd paragraph]

When we spoke with Conduit officials in November 2016 about QA for the contract they told us they had not been enforcing Conduit's plan and were in the process of reviewing and revising the plan with the goal of having a revised version completed by April 2017, even though the contract expires in October 2017.

This statement is factually incorrect. Conduit has been enforcing and applying the plan. However, certain scheduled checklists that were somewhat redundant had been omitted to reduce administrative burdens. These changes were not made to the plan that was incorporated into the contract, mainly because of the difficulty of changing the contract when the Quality Control Plan was included in full text and the plans themselves run into hundreds of pages. We would recommend that in the future, compliance documents be incorporated by reference so that the contract could be easily updated as the plans evolve to meet changing program requirements. Currently all checklists have been reinstated and plan updated as of August 2016.

Finding #QA3) Contract Quality Control [Page 29, 2nd paragraph]

... the Regional Program Manager worked almost 400 hours as a linguist, in addition to working as the Regional Program Manager. Conduit officials could not provide an adequate justification for why the

Conduit Language Specialists DoJ/OIG Audit Response
DRAFT AUDIT REPORT – LIMITED OFFICIAL USE

Regional Program Manager also worked as a linguist when he had several significant responsibilities related to contract administration.

All Conduit supervisors and Managers are also fully qualified TITLE III Analytical linguists. As such, they may be required to fill in and perform work as a linguist in unplanned or emergency situations.

Finding #QA4) Contract Quality Control [Page 29, 4th paragraph]

Conduit never backfilled the vacancy for the Regional Program Manager position. According to Conduit officials, Conduit divided the responsibilities of the Regional Program Manager among existing management employees.

The initial statement is untrue since this “position” and functionality was assumed by the VP/General Manager and two additional managers were added to perform this management function. The fact that the single person was replaced by 2 plus people means that the position was never vacant and was actually overstaffed compared to the initial estimates.

Finding #QA5) Contract Quality Control [Page 29, 4th paragraph]

However, it did not provide evidence to demonstrate that the duties of the Regional Program Manager position were being completed.

First, this question was never raised during the audit. Secondly, the auditors never requested the Division Supervisor Job description that replaced the one Program Manager position to compare contractual duties, so they were unable to compare the job responsibilities of these positions.

If the auditors have specific factual examples of Program Manager duties that were not being performed due to this management change, we would be happy to address them.

Finding #QA6) Contract Quality Control [Page 29, 4th paragraph]

Further, we found Conduit kept the Regional Program Manager position in its calculation of fixed billing rates even though the position was vacant; thus, Conduit's fixed billing rates included costs associated with the position. These costs were included in the invoices submitted to the DEA and were reflected in the price adjustments Conduit received under the contract. We discuss this issue in more detail under the Service Contract Requirements and Contractor Payments section later in this report.

The audit attempts to claim that we should not have billed the existing FFP rate since we never “back filled” a “vacancy” of the Program Manager. First, this claim is factually incorrect, as stated above in the previous related responses.

Second, in this audit there seems to be a misunderstanding of the mechanics of a FFP contract rate. The actual amount that Conduit had to spend to perform the Program Management tasks for the program management function has no bearing upon the bid FFP hourly rate and its billing. This rate is billed for

DRAFT AUDIT REPORT – LIMITED OFFICIAL USE
Conduit Language Specialists DoJ/OIG Audit Response

Page 13 of 22 Pages

**Conduit Language Specialists DoJ/OIG Audit Response
DRAFT AUDIT REPORT – LIMITED OFFICIAL USE**

every delivered linguist hour, and the initial FFP pricing included an estimated amount of program management costs. The fact that Conduit ended up spending much more than estimated to perform the program management function does not mean that the FFP contract billing rate is adjusted after the fact. Rather the FFP rate is remains unchanged. This would be true even if Conduit was able to perform the program management functions with less than the estimated costs.

There also seems to be a misunderstanding of what the contract requires and the purpose of the FFP Rate Pricing that was submitted as part of the BAFO price proposal during the competition period. The BAFO pricing exists solely to explain the proposed FFP hourly rate for evaluation in the source selection. It is not a staffing plan – let alone one that is a compliance document. It is the best estimate that Conduit has at the time regarding the anticipated requirements for the functions that are specified in the Contract T&Cs and the PWS. How the Contractor meets these requirements are up to the Contractor as long as the requirements of the contract PWS and Contract T&Cs are met. Since the pricing rates were done as part of a Best Value procurement, these rate could have been proposed without detailed pricing justification. Obviously our source selection evaluation score would suffer, but these would have still been a valid bid rate. Finally, even if the BAFO pricing was treated as a compliance document, it would be superseded by the superior requirements specified in the Contract T&Cs and the Statement of Work (PWS).

In this specific contract, Conduit’s estimate of the hours required for Program Management were low and we did not correctly anticipate the impact of the geographical separation between the Mountain and Phoenix Field Division locations, nor the implementation of new systems and procedures (e.g., the CHRONUS timecard system and new security procedures/requirements). As such, additional labor was added, in the form of four other local managers (two Division Managers and two Coordinator) who were supervised by the VP/General Manager. Since the contract was a FFP hourly rate, the associated costs associated with these additional personnel were absorbed as a loss by Conduit. In Summary:

| CONTRACT PERIOD | PAY PERIODS | PROPOSED | ACTUAL | NET |
|-----------------|-------------|------------|------------|------------|
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| TOTALS | | [REDACTED] | [REDACTED] | [REDACTED] |

These additional labor costs were absorbed by Conduit and not billed to the Government. This is consistent with the contractual nature of a FFP/LH contract. If this contract was a cost reimbursement based contract, then Conduit would have updated its billing rate to include these additional managers and the increased actual costs. According to the Auditor’s logic, Conduit should now submit a claim for the added program management costs incurred by Conduit, much as if this was a cost reimbursement contract.

**Conduit Language Specialists DoJ/OIG Audit Response
DRAFT AUDIT REPORT – LIMITED OFFICIAL USE**

Finding CP#1) Contractor Performance [Intro, Page ii] and [Page 31, last paragraph through Page 34]

We determined that Conduit was unable, on three different occasions, to fully meet the DEA's requirement for two languages, Arabic and Bosnian. [Introduction, page ii]

We requested and the DEA provided the 12 task orders issued in support of the case where, according to the Case Agent, Conduit was unable to provide Arabic linguists. We found that the DEA issued 3 of the 12 task orders to 2 other linguist contractors because. According to Conduit officials, Conduit could not provide the number of favorably adjudicated Arabic linguists needed by the DEA for the field divisions under the contract.... [Page 32, 2nd paragraph]

The Phoenix TM also noted that Conduit was not able to provide Bosnian (a variant of Serbo-Croatian) linguists to support a case. According to Conduit officials, Conduit had a Bosnian linguist available, but the linguist did not have a current background investigation. [Page 33, last paragraph]

Most of this section is redacted, but deals with a situation where cleared non-local linguists were not available due to Government Non-Performance. Since the details are redacted, we cannot respond to the specific details of the finding.

Finding CP#2) Contractor Performance [Intro, Page ii] and Conduit's Scheduling of Linguists [Page 36, 1st and 2nd retained paragraph]

We found that Conduit replaced linguists classified as independent contractors with linguists classified as employees without first consulting with DEA TMs or DEA Special Agents. These replacement linguists were new to the case and did not have the aggregate, historical knowledge of the analysis previously performed on the case. Such transfers may risk disrupting and jeopardizing impacting ongoing investigations and prosecutions [intro page ii]

Conduit classified linguists as either employees or independent contractors. According to Conduit officials, staffing of linguists is based on multiple factors. Linguists we interviewed explained that Conduit gives preference to their employee linguists over their independent contractors to work on task orders [Page 36, 1st retained paragraph]

We interviewed and surveyed Case Agents from the Denver and Phoenix Field Divisions and found agents encountered issues with Conduit replacing linguists on their cases, sometimes only to ensure that employee linguists were working 40 hours per week. While not every agent had this concern, those that did explained that replacing linguists can create unnecessary [emphasis added] risk for their cases. [Page 36, 2nd retained paragraph]

Use of the word "unnecessary" implies this is at our whim. As stated before we understand the mission and any interruption is unproductive for all concerned. When a substitution is unavoidable, any linguist that is replaced is supplied a "Case Log" to minimize any disruption and be brought up to speed quickly. A Conduit developed "case logs" is a summary of all current case events that are used for quick reference to any agent or linguist that has to be updated quickly."

**DRAFT AUDIT REPORT – LIMITED OFFICIAL USE
Conduit Language Specialists DoJ/OIG Audit Response**

Conduit Language Specialists DoJ/OIG Audit Response
DRAFT AUDIT REPORT – LIMITED OFFICIAL USE

These related statements are a conflation of multiple issues and is factually not correct in many aspects:

- 1) Personnel assignments are always coordinated with the TM and appropriate SOD and site security personnel;
- 2) Many times Agents have “name requests” for their favorite linguists. We try to accommodate these requests, but many times we were required to assign a different individual. Some of the Agents have trouble understanding that this contract is not a “personal services” contract and that Conduit has the authority (barring security issues) to manage its workforce. Regardless, Conduit makes every effort to keep staffing for cases intact;
- 3) We do our best never to substitute a linguist on a case with a new linguist. However, we have to add new linguist when more wiretaps are authorized on a case. Additionally, when a local linguist becomes available and there are TDY linguists, often the TM will require that we substitute linguists to avoid TDY expenses. Finally, linguists do get ill and/or change their career plans.

The fact is 1099 linguists are typically those that handle exotic languages -- while W-2 employees are mainly Spanish Linguists. It is rare that they would not be involved on the same cases together.

As has been explained previously to the auditors, staffing is very complex and based on multiple factors. We use our Best Practices to help our supervisors in the event we have or need to make a change. These changes can be based on linguist availability, local availability of linguists, agents requesting reassignments, logistics, activity of new lines, case activation etc., and seldom has to do with ensuring employee a 40-hour week. Replacement is only a last resort and minimum disruption is our goal at Conduit.

Finding SCA#1) Vacation and Holiday Pay [Page 38, 2nd paragraph]

Conduit's policy did not address paid vacation for employees with over 15 years.

This issue has been corrected. Our old standard was based upon the Foreign Language Translator WRD (#1987-0989) requirements which were used on prior DEA contracts and all other non-DoJ Title III linguist contracts.

Please note that we currently do not have any employees that have 15 years or more of seniority. No employee will be eligible for the new SCA mandated vacation of 4 weeks at 15+ years of seniority until 2019.

Finding SCA#2) Vacation and Holiday Pay [Page 38, 2nd paragraph]

...we found that, to receive a paid holiday, Conduit required employee linguists to work 32 hours during the week of the holiday, as well as work the day prior to and the day after a paid holiday. 29 C.F.R. § 4.174 states that unless specified otherwise in a DOL WD, an employee who performs any work during the workweek in which a named holiday occurs is entitled to the paid holiday. The paid holiday cannot

DRAFT AUDIT REPORT – LIMITED OFFICIAL USE
Conduit Language Specialists DoJ/OIG Audit Response

Page 16 of 22 Pages

Conduit Language Specialists DoJ/OIG Audit Response
DRAFT AUDIT REPORT – LIMITED OFFICIAL USE

be denied because the employee did not work the day before or the day after the holiday, unless such qualifications are specifically included in the DOL WD.

This is the requirement for full-time employees. The requirement for part-time employees is different, specifically:

Holiday obligations to temporary and part-time employees who work an irregular schedule of hours may be discharged by paying such employees a proportion of the holiday benefits due full-time employees based on the number of hours the temporary and part-time employee worked in the workweek prior to the workweek in which the holiday occurs. [DoL Field Operations Handbook (FOH), Sect 14j05(b)]

We have modified our holiday policy to fully conform to these requirements and will provide an updated statement of accrued benefits to all present and past employees. We will also confirm with the DoL that these calculations have been performed correctly.

Finding SCA#3) Vacation and Holiday Pay [Page 39, 1st paragraph]

Further, Conduit's independent contractor linguists do not earn any vacation, which is not in compliance with DOL WD Number 2012-0012.

We have reviewed the past records of 1099 part-time employees and identified those that would have enough service to qualify for vacation benefits. All current and past employees will receive an updated statement of accrued benefits.

Finding SCA#4) Vacation and Holiday Pay [Page 39, 1st paragraph]

Additionally, independent contractors were only paid for holidays at 1.5 times the wage rate if they worked the holiday, rather than 2 times the wage rate or another day off, as required. According to 29 C.F.R. § 4.174, an employee who is eligible to receive payment for a holiday must receive the appropriate amount of pay up to 8 hours

We have modified our holiday policy to fully conform to these requirements and will provide an updated statement of accrued benefits to all present and past employees. We will also in the process of confirming with the DoL that these calculations have been performed correctly.

Finding SCA#5) Employee Records [Page 39, 2nd paragraph]

Conduit did not provide us with a complete and accurate list of all the linguists who worked under the contract. Conduit officials explained that a list of linguists who worked under the contract was not readily available and developing a list would be very labor intensive.

DRAFT AUDIT REPORT – LIMITED OFFICIAL USE
Conduit Language Specialists DoJ/OIG Audit Response

Page 17 of 22 Pages

Conduit Language Specialists DoJ/OIG Audit Response
DRAFT AUDIT REPORT – LIMITED OFFICIAL USE

Employee records that contain information regarding “correct work classification, rate of wages paid and fringe benefits provided, rate of fringe benefit payments in lieu thereof” are contained in the HR Department’s records. This data, along with “total daily and weekly compensation of each employee” is also contained in the payroll system. The auditors wanted this data sorted specific to this contract. As explained previously, payroll records and invoices are indexed by the DEA’s I-Number and Task Order assignments. Please reference the series of emails sent between the dates of March 20, 2017 to April 4th, 2017. These provided the Auditors with payroll records showing all requested information: rate of wages paid, fringe benefits provided and how they were paid, total hours worked, et.al.. This information was provided as requested.

Finding SCA#6) Payroll Taxes on Fringe Benefits [Page 41, Table 2]

Conduit's labor hour rate calculation applied payroll taxes to the total amount of wages and fringe benefit costs paid for linguists. However, only independent contractor linguists received cash payouts for their fringe benefits. According to Conduit officials, fringe benefits for employee linguists are paid to a third party for health insurance. According to the Internal Revenue Service Publication 15B, employer paid health insurance for employees is not considered wages and is exempt from federal withholding, social security and Medicare, and federal unemployment taxes. Therefore, health insurance paid for employee linguists is not subject to the same taxes as wages or fringe benefit cash payouts, and Conduit's labor hour rate calculation improperly applied payroll taxes to the health insurance payments for employee linguists.

With regard to OIG audit finding that fringe benefit payments for health insurance, the auditor’s reliance on IRS Pub 15B, Employer’s Tax Guide to Fringe Benefits, is misplaced. The Fringe Benefit Exclusion Rules set forth in section 2 of IRS Pub 15B excludes certain benefits from a recipient’s pay. As stated in IRS Pub 15B, “This exclusion applies to contributions **you** make to an accident or health plan for an employee...” (emphasis added). “You” as used in this clause is referring to the employer. In the case at hand, the health insurance payments made to the third party are not made from the employer’s funds for the employees, but rather withheld from and paid on behalf of the employees. When an individual becomes an employee of Conduit Language Specialists, Inc. (Conduit), their agreement sets forth their rate of pay per hour plus their health and welfare fringe benefit rate per hour. Compensation, as set forth in paragraph (c) of the Service Contract Act of 1965, as Amended (Jan 2006) includes monetary wages and fringe benefits. Therefore, compensation for such employees is the total of these two amounts. The health and welfare fringe benefit portion of their compensation is then withheld and paid over on their behalf to the third party administrator of Conduit’s benefit plans, The Contractors Plan. These monies are then utilized for benefits of the employee or are put in a reserve account for future use and tracked on a per employee basis. Since these benefits make up the employee’s compensation and the expenditures are not covered under a section 125, cafeteria plan, the benefit payments are properly included in taxable wages of employees.

Conduit Language Specialists DoJ/OIG Audit Response
DRAFT AUDIT REPORT – LIMITED OFFICIAL USE

Finding SCA#7) Combined Overhead versus G&A [Page 42, Footnote 38]

The contract specifically stated that fixed billing rates were to include wages (including apportioned supervisory and management labor), overhead, G&A, and profit. According to Conduit officials, Conduit used a combined overhead pool, which is reflected as G&A in its fixed billing rate calculations.

This confusion results from the limited familiarity with combined O/H cost pools (common in small and moderate sized businesses) and the inadvertent use of the title “G&A” versus the usual “O/H” designator in some of the BAFO pricing sheets.

Conduit uses a combined O/H cost pool approach, which includes all indirect costs except for IR&D and over unallowable indirect costs. This is because Conduit does not historically have enough program/function specific indirect costs to justify accounting for these indirect costs in separate program/functional specific O/H cost pools. While not covered by the Cost Accounting Standards (CAS) due to our small size, we propose costs in the same manner as we collect them (consistent with CAS 401 and 402).

Finding SCA#8) Program Management Labor Billings [Page 43, 1st paragraph]

However, as mentioned earlier in this report, the Regional Program Manager left after almost 2 years and Conduit neither backfilled the vacant position nor notified the DEA of this change. According to Conduit officials, Conduit divided the responsibilities of the Regional Program Manager amongst existing management employees. Nevertheless, Conduit continued to apply a portion of the labor costs for the Regional Program Manager to its fixed billing rate calculations even though the position was not filled for 3 out of 5 years of the contract.

This is a repeat of the prior finding and has already been answered in detail. Conduit has repeatedly explained that this statement is not accurate, but it is still being repeatedly stated in the audit report.

Finding SCA#9) Price Adjustments [Page 42, last paragraph, Page 43, 1st Paragraph]

We determined Conduit’s fixed billing rates were inflated because Conduit inappropriately calculated its labor hour rates using a total of [REDACTED] hours, which, as we previously explained, included holiday and vacation hours that Conduit did not pay to all of its linguists. Conduit also included apportioned supervisory and management labor costs in its fixed billing rates for each contract item, except for those for travel. According to Conduit, the Regional Program Manager was responsible for overseeing administrative duties for the Phoenix and Denver Field Divisions and acting as the Operations Manager. However, as mentioned earlier in this report, the Regional Program Manager left after almost 2 years and Conduit neither backfilled the vacant position nor notified the DEA of this change. According to Conduit officials, Conduit divided the responsibilities of the Regional Program Manager amongst existing management employees. Nevertheless, Conduit

DRAFT AUDIT REPORT – LIMITED OFFICIAL USE
Conduit Language Specialists DoJ/OIG Audit Response

Page 19 of 22 Pages

Conduit Language Specialists DoJ/OIG Audit Response
DRAFT AUDIT REPORT – LIMITED OFFICIAL USE

continued to apply a portion of the labor costs for the Regional Program Manager to its fixed billing rate calculations even though the position was not filled for 3 out of 5 years of the contract.

There are a lot of issues mixed together in this long paragraph:

- 1) The issue of pricing in vacation time has already been addressed above. Since all employees (including 1099s) will or have receive appropriate vacation pay, this finding as been corrected;
- 2) Reassignment of “existing” management personnel to fulfill the management function did not increase the FFP rate nor the number of hours billed. In effect, these costs -- which came out of our indirect overhead pool – subsidized the efforts that benefited the DEA directly without additional costs to the DEA contract.
- 3) The misstatement that the Program Manager position was unfilled and therefore should not have been included in our billing rate has also been addressed on multiple fronts: First the underlying premise that the position was not backfilled is not true; the BAFO pricing estimate is not a staffing plan nor a compliance document; and the nature of FFP LH contracts precluded us from adjusting the rate based upon changes in personnel – and if we were allowed to adjust the FFP rates to reflect actual labor expended (as in a cost reimbursement type contract), then our rates would have dramatically increased.

Finding SCA#10) SCA Price Adjustment Methodology Table 5, Page 44, Footnote a]

The audit has correctly pointed out that there is a prescribed method for calculating the SCA price adjustments and that our past methodology has not been complaint with this method. While we feel that the prior method of repricing the original BAFO model with the original pricing rates & factors was the most equitable for the DEA, we have already converted to the methodology specified in the audit.

Finding SCA#11) SCA Price Adjustments [Table 6, Page 46]

There are a number of issues combined with these “allowed” rates. Since we do not have access to the calculations that were used to develop these revised rates, we cannot precisely pinpoint the issues that make the these rates diverge from our calculations. However, we can surmise some areas where we disagree with the assumptions and methodologies used to develop these “allowed rates.”

- 1) Overtime Rates: No adjustment for O/T rates are included in the “allowed price” calculations. We surmise that this position comes from the reading of the statement in the DoL PACT User Guide that states “OT *premium* is *not* [emphasis in the original] allowable within the price adjustment calculation. OT premium is not required by the SCA, but instead is a requirement of the Contract Work Hours and Safety Standards Act or the Fair Labor Standards Act and is therefore not permitted under FAR 52.222-43/44, 32.” However, further reading of the same section of the DoL PACT manual states that “This statement should not be confused to mean that a contractor is not entitled to price adjustment on OT hours. OT hours are entitled to wage adjustment at the *straight time rate*; *not at the OT rate* [emphasis in the original].” It is obvious

**Conduit Language Specialists DoJ/OIG Audit Response
DRAFT AUDIT REPORT – LIMITED OFFICIAL USE**

that this adjustment has not been made in the “allowed rate” calculations.
[<https://www.wdol.gov/pact/pact-user-guide.pdf>, page 27, paragraph f]

- 2) **State Labor Taxes:** It appears probable that these calculations did not include all of the various State level labor taxes and/or did not include them at the correct rate. Each state covered in the CLIN pricing (Colorado and Arizona) have a variety of labor taxes. We suspect that the bulk of the difference is centered on the non application of Workman Comp taxes to the incremental increase in the base wage rates.
- 3) **Paid Sick Leave Benefit:** Future adjustments will also have to take into consideration the implementation of the Paid Sick leave benefit that has been added by Arizona [i.e., Effective July 1, 2017, rate of 1 hour paid sick leave per 30/1AW Far 52.222-43(d)(2)&(e)] and the associated Federal paid sick leave mandate that will apply with the current implementation of WRD Revision 9 to any “new work” efforts.

Finding SCA#12) SCA Price Adjustments [Page 47, 2nd and 3rd paragraphs]

The types of documentation useful when reviewing a price adjustment request include: actual wage records, documents supporting accompanying costs (such as payroll taxes and workers compensation costs), and documents supporting fringe benefit costs. Again, cash payouts for fringe benefits are subject to the various payroll taxes. However, employer payments to fringe benefit plans are not subject to payroll taxes. Thus, documentation to support the allowability of any accompanying payroll taxes for fringe benefit increases is essential.

We found that DEA Contracting Officials only reviewed Conduit’s adjusted fixed billing rate calculations. Conduit did not provide, and the DEA did not request, relevant data such as payroll or fringe benefits payout information, which is critical for the DEA to validate and verify whether Conduit should have received the price adjustment. Conduit’s request for a price adjustment also did not identify the breakdown of employee linguists and independent contractor linguists paid under the contract. Since independent contractor linguists receive their fringe benefits as a cash payout, this impact the amount of payroll taxes Conduit could include in their price adjustment. As a result, we could not calculate the correct price adjustment amount Conduit should have received or the dollar value of the overpayment.

This data was actually considered when reviewing price adjustments. However, the analysis that required was minor due to the circumstances surrounding the implementation of the Analytical Wage Rate determinations and the general Title III Linguist labor market.

- 1) The introduction of the new Analytical Linguist Wage rate determination was so significantly above the normal market wages for Title III linguists that the new minimum WRD wage rate was almost universally adopted as the new labor baseline. No contractor that we knew of, and certainly not Conduit, was willing to pay a surcharge above the new WRD minimum rate since it already resulted in an overnight 35% increase in the base wages. Any subsequent increase in the WRD wage rate was 100% above what was previously paid to the linguists.

**DRAFT AUDIT REPORT – LIMITED OFFICIAL USE
Conduit Language Specialists DoJ/OIG Audit Response**

Page 21 of 22 Pages

Conduit Language Specialists DoJ/OIG Audit Response
DRAFT AUDIT REPORT – LIMITED OFFICIAL USE

- 2) As shown above, the H&W payments are subject to payroll taxes. Since this is true regardless of the 1099/W-22 employee status, a breakout between these labor types was not required for pricing of the WRD and DoL AAM H&W rate increases.

Finding CR#1) Contract Requirements [Page 50 to page 53]

Since this portion of the audit is almost totally redacted, we cannot comment on these findings.

CONDUIT LANGUAGE SPECIALISTS, INC.
LETTER TO THE DEPARTMENT OF JUSTICE INSPECTOR GENERAL

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URGENT – TIME SENSITIVE

November 9, 2017

Inspector General Michael E. Horowitz
U.S. Department of Justice
Office of the Inspector General
950 Pennsylvania Avenue, N.W.
Suite 4706
Washington, DC 20530-0001

RE: DOJ OIG Draft Report involving Conduit Language Specialists

Dear Inspector General Horowitz,

We are writing you under the advice of a former Senior Executive of the Council of the Inspectors General on Integrity and Efficiency (CIGIE) who is confident you would want to be informed of our Company's anxieties. We are taking this unusual step in sending our request directly to you as the Inspector General because of the urgency of our request. Our immediate concerns are regarding the DOJ OIG draft audit involving our company and its potential findings, conclusions and therefore recommendations which are not supportable based on the actual evidence available which has been supplied to the auditors. We are asking that prior to releasing this audit in final form, that we may speak directly with you or a member of your senior staff regarding our serious concerns that some of the audit findings are factually inaccurate.

We send this letter appreciating your office operates under the Government Accountability Office (GAO), Government Auditing Standards, generally accepted government auditing standards (GAGAS). Within GAGAS, Chapter six (6) "Field Work Standards for Performance Audits" – 6.03 "Reasonable Assurance" – *In performance audits that comply with GAGAS, auditors obtain reasonable assurance that evidence is sufficient and appropriate to support the auditor's findings and conclusions in relation to the audit objectives,* with the belief that this standard was not complied with at this time.

We have made several attempts to work with your audit team over the last several weeks, both verbally and in writing, along with repeatedly providing proof of documentation to address the inaccurate findings related to our company. We are however concerned that our documentation will continue to be ignored or dismissed and that the audit findings will be inaccurately reported in the final version. We have repeatedly tried to work with the audit team to resolve these discrepancies between the audit report and the documentation, but we



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remain uncertain that our responses were fully reviewed or that they had any impact on correcting the inaccurate statements/findings made in the draft audit report.

In looking at prior topic related audits released by your office, they are factual, not containing opinions or unsupported speculation, nor do they contain long narrations that attempt to prove a predetermined opinion. They are professional, direct, factual, and to the point. We are asking for the same quality of work and reporting with this audit.

As the Inspector General for the DOJ and the current Chair of the CIGIE, we have been informed, and we believe, that you take your reports seriously and would not want to publish an inaccurate audit report. Based on the Quality Standards for Federal Office of Inspectors General referred to as the "Silver Book" Under Section "V - Maintaining Quality Assurance," each OIG shall establish and maintain a quality assurance program to ensure that work performed adheres to established OIG policies and procedures; meets established standards of performance, including applicable professional standards; and is carried out economically, efficiently, and effectively. It further states that because OIGs evaluate how well agency programs and operations are functioning, they have a special responsibility to ensure that their own operations are as effective as possible.

We are trying to be heard before this audit report is released as it could be damaging to both my company and your office's reputation. Therefore, we ask once again for an opportunity to speak with you or a member of your senior staff. If we are not granted this request, we are hopeful that there be an independent quality assurance review conducted of the work performed prior to the report's final release.

Respectfully Submitted,

Diana Autenrieth, President
Conduit Language Specialists

CC: Assistant Inspector General Audit Division, Mr. Jason R. Malmstrom
Denver Regional Manager Mr. David M. Sheeren
Assistant Regional Audit Manager [REDACTED]

**CONDUIT LANGUAGE SPECIALISTS, INC.
NOVEMBER 2017 RESPONSE TO THE DRAFT AUDIT REPORT⁴⁸**



November 28, 17

Yvonne L. Garcia
Counsel to the Inspector General
U.S. Department of Justice Office of the Inspector General
950 Pennsylvania Ave., N.W., Suite 4706

Dear Yvonne,

Per our previous discussion, we have reviewed the most recent versions of the audit report. Our comments are included in the attached document. The color key is:

- Red: Changes marked by OIG from the prior version
- Orange: Changes from the prior version that are not marked;
- Yellow--bright: OIG marked sensitive information
- Yellow--light: Additional sensitive information that should be redacted
- Blue: Comments regarding the inaccuracies in the audit report.

There are a few issues and concerns that we have that we need to make clear:

- 1) We listed a series of five generic issues we saw concerning the conduct of the audit and the audit report. These concerns have not really been fully address and remain in the audit report.
- 2) The recommendation for disallowance of billed costs is a serious remedy and is always associated with a deficiency in the Contractor's contract performance, usually for a defective or substandard supply or service. Use of this remedy for instances where the Government is at fault for the problem is totally improper.
- 3) Corrections were sometimes made only in one section of the document and not replicated in the other sections that repeated that same previous information. Please insure that the audit is at least internally consistent.
- 4) There seems to be a heavy reliance by the auditors in their rationale for the findings on the assumption that the proposal was a compliance document rather than an evaluation document. The fact that clause H.6 incorporates the proposal into the contract by reference does not make it a compliance document that supersedes the other terms of the contract. Nor does it limit the contractor's options to change plans to meet the contract requirements. In contrast, the draft Quality

⁴⁸ Attachments to this response were not included in this final report.

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Control plan was later incorporated into the contract after approval of the Government, and thus became a formal compliance document. This overall status of the proposal as an evaluation document was contemplated from the start by the instructions contained in the Request for Proposal (RFP). The RFP (under Section L) also was very clear that "Evaluation is performed to determine the Offeror's understanding of the work to be performed, approach, potential for completing the work as specified in the solicitation, cost/price realism and reasonableness, and ranking with competing Offerors." [Section M]. Our proposal did that, and all the various assumptions and examples were our best effort at showing the DEA evaluators that we understood the RFP requirements and could appropriately respond to their needs -- given the facts and available knowledge that existed at the time of the proposal.

- 5) Leaving aside the correction made in previous paragraphs regarding this issue, the auditors attempt to disallow costs because they feel that the DEA did not receive the contracted services. However, this audit ignores the fact that any requirement cited is just one of many requirements for Linguist deliverables under the contract and that the quality of the services received is determined by the Contracting Officer and his/her Technical Representatives. The work product is characterized by a variety of important factors and metrics (e.g., timeliness, accuracy, data analysis, investigative deconfliction, and et.al.) that is specified in many other parts of the contract. To insist that the DEA Contracting Officer, DEA Agents and Technical Representatives, Task Monitors were unable to judge the quality of the work product discredits the expert Government officials that understand this type of Title III investigation. Furthermore, our specialized in-house testing has proven successful at identifying those qualified individuals and has been informally accepted by DEA. As of this inquiry, and to the best of our knowledge, the accuracy of our linguist transcripts, summaries and data analysis has held up successfully under court scrutiny. Relying only on third party academic proficiency certification as the only standard of individual linguistic capability for Title III investigations and as a standard of insuring accuracy for translations in this realm, is simplistic and would only undermine the mission of DEA by obviating the goals of the PWS.
- 6) We find it confusing the statement near the end of our last teleconference where it was mentioned (in reference to the incorrect finding regarding "Final Vouchers") that this would remain in the audit despite the auditors agreeing that it was an incorrect application

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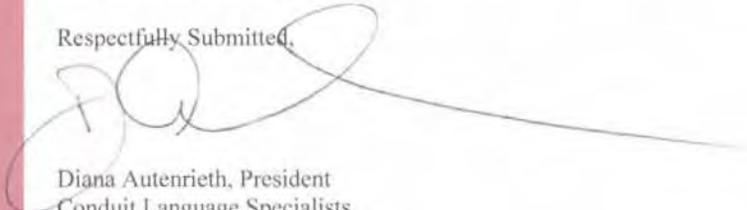
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of the contract clause. why would this be published as a finding when it is known to be incorrect?

In general, we do not worry about these incorrect issues being cited in an audit report except that, in this case, there are plans to publically release this report. This is despite being warned repeatedly about factual errors and misstatements contained in the report.

Finally, since you are planning on releasing our prior written response, please make sure that all sensitive information, especially PII information such as names, are redacted from all documents that are made public.

Respectfully Submitted,



Diana Autenrieth, President
Conduit Language Specialists

Enclosed: Attached files

OFFICE OF THE INSPECTOR GENERAL
ANALYSIS AND SUMMARY OF ACTIONS
NECESSARY TO CLOSE THE REPORT

The OIG provided a draft of this audit report to the Justice Management Division (JMD), Drug Enforcement Administration (DEA), and Conduit Language **Specialists, Inc. (Conduit)**. The **DEA's and Conduit's responses** are incorporated in Appendix 5, Appendix 6, Appendix 7, and Appendix 8, of this final report. JMD elected not to provide a formal response. Conduit did not explicitly agree or disagree with many of our recommendations, but provided comments that were relevant to some of our recommendations. We describe and, where appropriate, reply to these responses in the applicable recommendations below. In response to our audit report, the DEA concurred with our recommendations and discussed the actions it will implement in response to our findings. As a result, the status of the audit report is resolved. The following provides the OIG analysis of the response and summary of actions necessary to close the report.

Observations and Clarifications

Conduit provided its initial response to the draft report in October 2017. On November 9, 2017, Conduit submitted a letter to the DOJ Inspector General asking to speak with him or senior staff and making numerous criticisms of the audit report, which, as we explain below, we believe to be unfounded. To address **Conduit's concerns, a teleconference between Conduit officials and the OIG audit** and senior staff was held on November 21, 2017. On November 28, 2017, Conduit submitted a second response with additional comments to the draft report.⁴⁹ We carefully **reviewed Conduit's October and November 2017** responses and supporting documentation, and we made minor adjustments to the report when warranted. Nevertheless, our overall conclusions and recommendations generally remained the same.

In its November 9, 2017, letter to the DOJ Inspector General, Conduit claimed that the OIG had not complied with the government auditing standard that requires auditors to obtain reasonable assurance that evidence supports their findings and conclusion. This criticism is unfounded. As stated throughout our report and in this appendix, our findings are based on the FAR, C.F.R., and contract requirements. This information, in addition to the other evidence gathered throughout the audit, provides a reasonable basis for our findings and recommendations, which are entirely consistent with government auditing standards.

Conduit also claimed in its November 9, 2017, letter, that the OIG ignored documentation provided by Conduit, which Conduit suggests resulted in audit

⁴⁹ For Conduit's additional responses, see Appendices 7 and 8.

findings that were inaccurate and not in compliance with Quality Standards of the Federal Office of Inspectors General. Contrary to Conduit's claim, the OIG provided Conduit numerous opportunities to provide additional documentation; reviewed and considered the documentation that Conduit did provide; and, where appropriate, made adjustments to our report. However, in general, the documentation Conduit provided was not sufficient to adjust our audit findings and did not generally impact our overall conclusions or recommendations.

Additionally, we disagree with Conduit's claim, in its November 28, 2017, response, that disallowance of billed costs for contract non-compliance is improper. According to 2 C.F.R. § 200.84, *Questioned Cost*, questioned costs are expenditures that do not comply with legal, regulatory, or contractual requirements; are not supported by adequate documentation at the time of the audit; or are unnecessary or unreasonable. We used this criteria when conducting our audit and questioned the costs in this report in accordance with this guidance. This includes questioning costs related to the linguists without valid language proficiency results, completed background investigations, or signed non-disclosure forms as required by the terms and conditions of the contract.

Lastly, Conduit stated in its November 28, 2017, letter that we relied heavily on the assumption that its proposal was a compliance document rather than an evaluation document. We disagree. We did not receive or review Conduit's proposal as part of this audit. We conducted our audit using the contract and subsequent contract modifications along with documentation included in the DEA's contract file.

Analysis of the DEA's and Conduit's Responses

In the cover letter to its initial response found in Appendix 6, Conduit makes several inaccurate assertions that generally concern the OIG audit and do not specifically address our recommendations. We respond to those statements first. Our discussion of the DEA's and Conduit's October 2017 responses to the recommendations and Conduit's November 2017 correspondence follows.

First, Conduit's initial cover letter stated that Conduit was "very confused" with this audit and "the method that it was conducted." However, we began the audit by providing an initiation memo to Conduit and conducting an entrance conference where we unambiguously communicated our audit objectives and process. Moreover, throughout the audit, as we do with all OIG audits, we communicated with Conduit officials either by phone, email, or in-person, including briefing them on our preliminary audit results in June 2017. At no point during the engagement did Conduit inform the OIG that it was confused about the audit or identify areas of concern regarding our audit methodology.

Second, Conduit's initial cover letter asserted that the OIG did not address certain statistics, such as total cases supported, orders supported, or labor hours spent to support the cases presented in our report, and that the OIG did not grasp the scope of activities performed and managed by the DEA and Conduit. Conduit's

Conduit's letter ignores the fact that, throughout our audit report, we detail the total number of task orders the DEA has issued under the contract during our audit, and the sample of task orders we judgmentally selected to test compliance with contract requirements. Moreover, the Introduction section of the report highlights the variety of tasks and the types of languages required by the contract. As for the broad statistics cited by Conduit in its letter, they were not relevant to our audit findings and their consideration would have had no effect on our results.

Third, Conduit's initial cover letter contended that "[a]ny problem or mistake [identified by the OIG], no matter how small, is a matter of concern" and that the OIG's findings relate to "a few task orders" and "a couple of negative comments." To the contrary, the issues we identified in the report are significant, were not isolated, and were ones that, as we discuss in the report, may impact the DEA's ability to conduct its mission effectively.

Fourth, Conduit's initial cover letter stated that, throughout the audit, it commonly ran into the problem where OIG auditors wanted a specific custom report that Conduit would have difficulty supplying in an expeditious timeframe. However, as we note in our report, and here again, our concern was not only the speed with which Conduit could provide us requested information, but also that in some instances Conduit provided information that was incomplete or inaccurate. Specifically, we were unable to identify an accurate list of linguists who worked under the contract based on the data Conduit provided. Without this list of linguists, for information necessary to determine contract compliance, we had to use data from the DEA to identify a list of linguists who worked under the contract. Because our requests for information were based on the FAR, the C.F.R., or contract requirements, we are still concerned that the required data is not readily available in complete and accurate form in **Conduit's accounting and management** systems.

Fifth, Conduit's initial cover letter claims that the OIG has misunderstood and **misrepresented the FAR. We disagree and have responded to Conduit's specific** arguments about the FAR as it relates to our analysis of each recommendation below.

Sixth, Conduit's initial and subsequent letters expressed concern that the report in certain instances blamed Conduit for not performing functions that are reserved for the DEA to perform, specifically relating to non-disclosure agreements and security background investigations. In our report, we clearly state that the DEA is responsible for ensuring that non-disclosure agreements and security background investigation contract requirements are enforced and completed. Nevertheless, Conduit also had a contractual responsibility to provide the DEA with linguists compliant with the contract terms and conditions in these areas.

Finally, Conduit's initial cover letter claimed that the OIG was reluctant and unwilling to update statements or conclusions in the report despite evidence to the contrary. We, however, did the opposite. Consistent with our audit practice, we had frequent discussions with Conduit officials throughout the audit, including after

a draft of this report was provided to them, and we carefully considered each concern raised by Conduit. In fact, where the OIG determined that Conduit presented information that warranted a change or adjustment to the final version of this report to ensure that it was both fair and accurate, the OIG did so. Where the OIG determined that no changes were warranted or necessary, we did not make the requested changes.

Recommendations for JMD:

1. Develop guidance on resources and training available to ensure compliance and accurate enforcement of the SCLS on DOJ service contracts.

Resolved. While JMD elected to not provide formal comments to the draft report, JMD concurred with our recommendation.

This recommendation can be closed when we receive documentation to support the guidance developed on resources and training available to ensure compliance and accurate enforcement of the SCLS on DOJ service contracts.

Recommendations for the DEA:

2. Remedy \$3,695,731 in allowable costs associated with:
 - a. \$2,493,784 paid to linguists without valid language proficiency testing results.
 - b. \$505,717 paid for linguists and a Regional Program Manager without valid background investigations.
 - c. \$661,885 paid for linguists without signed non-disclosure agreements on file prior to working under the contract.
 - d. \$924 in travel costs for incorrect mileage, mileage and per diem rates, and costs not associated with official business travel.
 - e. \$33,421 in unreasonable costs the DEA paid to another linguist **contractor for Arabic linguists due to the Contracting Officer's** inadequate review of contractor rates and failure to ensure the rates were fair and reasonable.

Resolved. The DEA concurred with our recommendation. The DEA stated in its response that it will review the unallowable cost of \$3,695,731 to identify all potential remedies available. If unallowable costs can be remedied in accordance with equitable contract procedures and policies, DEA will endeavor to pursue them.

Conduit neither agreed nor disagreed with subpart a in its responses. In its initial response, Conduit stated that language proficiency is one of many contract requirements and the quality of services is determined by the Contracting Officer and her technical representatives. In its November 9, 2017, letter to the Inspector General, Conduit stated that its in-house testing has proven successful at identifying qualified individuals and has been informally accepted by the DEA, and the work of its linguists has held up to court scrutiny. However, the contract states that minimum acceptable language proficiency standards *must* be certified by either U.S. Government Agencies, a Federal Court Interpreters Certification Program, State Courts, or from a list of professional interpreter associations, as identified in the contract. The contract further states that language proficiency testing by colleges, universities, and additional institutions may be accepted based upon **the DEA's verification of an entity's credentials** to conduct such tests. Conduit has not provided documentation with its responses to support that the DEA has approved **and verified Conduit's credentials to conduct this** testing in accordance with the contract requirements. Conduit's **November 9, 2017**, letter also states that relying on the third party academic proficiency certification as the only standard of individual linguistic capability for Title III investigations, and as a standard of ensuring accuracy for translations in this realm, is simplistic and would only undermine the mission of the DEA by obviating the goals of the performance work statement. However, we maintain our position that completion of the language proficiency testing by a provider in accordance with the contract is an important contract requirement that Conduit did not properly fulfill as the DEA has not approved **and verified Conduit's credentials** to conduct this testing. In its initial response, Conduit also stated all linguists assigned to the contract had passed previous linguist proficiency testing exams. However, it is irrelevant to discuss previous testing, which was neither provided to the DEA, nor verified, since it was outside the scope of this audit. Additionally, our audit report did not question the DEA's *ability* to judge the quality of linguist work product; rather, as explained above, our report identified non-compliance with contract terms and conditions.

We requested and reviewed any language proficiency testing results that would have covered the contract period, including waivers approved by the DEA for some of the testing. In its initial response, Conduit stated that all linguists have passed third party tests. In its November 2017 response, Conduit stated that the waivers approved by the DEA covered all portions of the testing. Conduit did not provide any evidence to support these statements with any of its responses to the draft report. Further, the waivers DEA approved clearly stated they were for the writing portion of the testing only. Consequently, we maintain our position that the linguists did not have the required language proficiency test results to fulfill the contract requirement *prior to working on the contract*.

Related to our analysis of language proficiency, in its initial response, Conduit disagreed with a footnote in our draft audit report regarding the potential

impact of translation and transcription work on legal proceedings. Because we did not review, as part of this audit, how translations and transcriptions are used in connection with legal proceedings, we eliminated reference to the portion of the footnote, in the final report, that addressed the impact of investigations on legal proceedings.

Conduit neither agreed nor disagreed with subpart b in its initial response. Conduit stated that it received notifications of waivers or completed background investigations from the DEA. Conduit officials provided additional documentation after the exit conference related to security background investigations. However, this information did not resolve our concerns. Based on the documentation, Conduit received approval from the DEA via email for the linguists to work on the contract. However, the email correspondence was not sufficient evidence to support that the linguists in our sample, prior to working on the contract, had received favorably-adjudicated background investigations or approved waivers while the investigation was in process. The DEA was unable to provide this documentation; therefore, as we explain in the report, the DEA did not ensure that linguists met the specific security requirements of the contract before allowing them to work on the contract. In its November 2017 response, Conduit stated that the contract non-**compliance was not Conduit's** fault. Our report states that the DEA did not ensure that linguists met the security requirements. Regardless of fault, this was a contract requirement that was not fully met.

Conduit neither agreed nor disagreed with subpart c in its initial response. Conduit explained that the non-disclosure agreement requires the signing witness to be a government official, not a contractor. Therefore, the DEA was responsible for ensuring non-disclosure agreements were completed. As we explained previously, the DEA is ultimately responsible for ensuring that this requirement is enforced and completed. However, Conduit should be verifying that its linguists have signed the agreements prior to working on the contract, as Conduit also had a responsibility to provide linguists non-disclosure agreements to be compliant with contract terms and conditions. In its November 2017 response, Conduit stated the contract non-**compliance was not Conduit's fault**. Again, our report highlighted that the DEA had a responsibility to ensure that non-disclosure agreements were completed. Regardless of fault, this was a contract requirement that was not fully met.

Conduit neither agreed nor disagreed with subparts d and e in its initial response. Conduit explained it was unaware of the improper billing and unreasonable costs, and therefore could not comment. During our status briefing in June 2017, we provided Conduit details related to the unreasonable costs. Conduit was also provided a working draft report to review and provide comment. Specific to subpart e, Conduit stated that cleared non-local linguists were not available due to "Government Non-Performance." However, Conduit did not provide any documentation to

support this statement with its initial response. For subpart d, after receiving **Conduit's** initial response, we provided Conduit specific details regarding the unallowable travel costs to facilitate the resolution of the unallowable costs with the DEA.

This recommendation can be closed when we receive evidence that the questioned costs have been adequately remedied.

3. Ensure corrective actions are taken to address deficiencies related to language proficiency and security requirements for linguists:
 - a. Establish procedures to ensure that linguists working under a DEA linguist contract have the proper language proficiency test results; evaluate the existing language proficiency testing to determine whether other testing is better suited to assess the skills needed by linguists to perform the work under the contract; and develop guidance for what situations warrant language proficiency waivers.
 - b. Ensure that all linguists sign a non-disclosure agreement prior to working on the contract and consider including the language identified in 5 U.S.C. § 2302(b)(13) in all non-disclosure agreements.
 - c. Formalize procedures to ensure that all linguists who work under the contract have favorably adjudicated background investigations and ensure that waivers are tracked to confirm that no lapses occur while background investigations are in process.
 - d. Develop procedures to inform Conduit about security developments including issuance of waivers and the status of linguist background investigations.
 - e. Ensure that linguists working under DEA linguist contracts are issued PIV cards that meet the requirements defined in FIPS Publication 201-2 and HSPD-12.
 - f. Develop procedures to ensure that the Contract Personnel Reports Conduit is required to send to the DEA are reviewed, tracked, and maintained in accordance with HSPD-12 and the contract terms and conditions.

Resolved. The DEA concurred with our recommendation. The DEA stated in its response that Special Operations Division (SOD) has already taken actions to address deficiencies related to language proficiency test results, linguist background investigations and waivers, and has also started monitoring non-disclosure agreements. The DEA provided updated procedures related

to language proficiency, security, and non-disclosure agreements, and we consider subparts b and c to be closed. Further, SOD has implemented procedures to communicate security developments with Conduit. The DEA Office of Acquisition and Relocation has also developed procedures to confirm that the Contract Personnel Reports are reviewed, tracked, and maintained properly by the DEA.

To further address deficiencies, the DEA will update its policy to mandate a review of all task orders to ensure that travel costs are documented and approved in accordance with Federal Travel Regulations, and coordinate with the Office of Acquisition and Relocation to develop policies and procedures in which PIV cards are issued to linguists from the field divisions.

Conduit neither agreed nor disagreed with subpart a in its initial response. Conduit maintains that its in-house testing is successful at identifying qualified individuals, and relying only on third party academic proficiency certification would undermine **the DEA's mission**. **Conduit also stated that** the in-house testing has been informally accepted by the DEA. As detailed in our report, this contract requires the use of approved third-party testing organizations. We requested documentation to support that the in-house testing has been approved by the DEA, and no documentation has been provided to date.

Conduit neither agreed nor disagreed with subpart b in its initial response. Conduit stated that the administration of signing of non-disclosure agreements is a duty of the DEA because a DEA agent or authorized personnel of the government must witness the signing of these forms. However, Conduit should verify linguists have signed the agreements prior to working on the contract.

Conduit neither agreed nor disagreed with subparts c and d in its initial response. Conduit stated that it received notifications of waivers or background investigations from the DEA. These were email notifications, which were not sufficient to demonstrate that the linguists in our sample, prior to working on the contract, had received favorably-adjudicated background investigations or approved waivers while the investigation was in process.

Conduit did not address subparts e, and f in any of its responses.

This recommendation can be closed when we receive evidence of the updated policies and procedures related to travel expenses, linguist PIV cards, and contractor personnel reports. In addition, the DEA should provide its evaluation of the current language proficiency requirements to determine if alternative requirements would better assess necessary linguist skills.

4. Ensure corrective actions are taken to address weaknesses related to contract administration and oversight:
 - a. Ensure that the Contract Administration Plan is enforced in its entirety and ensure the completion of the Contract Administration Checklists as identified in the plan.
 - b. Review all task orders issued under the contract where the DEA paid travel costs to ensure the travel costs were properly reimbursed.
 - c. Review the COR Designation Letter and revise as necessary to **ensure the COR's responsibilities are properly documented.**
 - d. Evaluate whether more than one COR for the eight regional linguists contracts would result in better management and oversight, develop policies and procedures to ensure the COR performs the responsibilities as delegated, and ensure other responsibilities assigned to SOD for the linguist program are documented and followed.
 - e. Ensure that Conduit notifies the COR when a task order for the contract is completed.
 - f. Ensure that Conduit developed and implemented an automated task order entry and tracking system as required by the contract.
 - g. Ensure that the TMs and COR complete the three Federal Acquisition Courses required by the DOJ for all levels of FAC-COR and provide documentation to support completion of these courses.
 - h. Ensure that TMs complete documentation as required by the contract and the DEA Contract Administration Plan and communicate regularly with the COR and the Contracting Officer, which includes notifying the Contracting Officer prior to any change in the TM assignments.
 - i. Ensure the Contracting Officer completes a performance assessment report in CPARS for the current year of the contract and completes a final performance assessment report in CPARS upon completion of the contract next year.
 - j. Develop procedures to ensure that the Contracting Officer completes the performance assessment report in CPARS regardless of whether a notification is received from CPARS.

- k. Ensure that Customer Satisfaction Surveys are provided to and completed by Case Agents, and are collected by TMs on a monthly basis.
- l. Coordinate with Conduit to ensure Case Agents complete and submit End of Case Surveys to the DEA and Conduit to provide feedback and identify any areas of improvement.
- m. Develop controls for contract management to ensure contract requirements are met and applicable laws and regulations are followed.
- n. Require Conduit to submit Administrative Reports that contain all the data required and develop procedures to ensure deliverables are submitted and reviewed for accuracy and completeness in accordance with the contract terms and conditions.

Resolved. The DEA concurred with our recommendation. The DEA stated in its response that since the issuance of OIG's draft report, the DEA contracting office has held weekly meetings with the Office of Compliance to examine the underlying issues identified. As a result, the DEA is currently preparing a mitigation strategy that includes updates to policy, training, and oversight. As this strategy is implemented, the DEA will provide the OIG with updates on each of these matters as they relate to the Conduit Linguist Services contract and these recommendations. For subpart 4h and 4k, the DEA provided documentation to support guidance the COR provided to the TMs regarding completing the documentation required by the Contract Administration Plan such as the Customer Satisfaction Survey, Contractor Performance Assessment Reports, and the Contract Administration Report. However, the DEA did not provide any instructions or guidance related to notifying the Contracting Officer prior to any change in TM assignments or specifically identify in the guidance from the COR that the TM should document and maintain the Customer Satisfaction Surveys completed by the Case Agents, which the TM uses to complete an overall Customer Satisfaction Survey that is sent to COR on monthly basis.

Conduit did not comment on subparts a, c, d, g, h, and m in any of its responses to the draft report.

Conduit neither agreed nor disagreed with subpart b in its initial response. Conduit explained it was unaware of the improper billing, and therefore could not comment. After receiving Conduit's initial response, we provided Conduit specific details regarding the unallowable travel costs to facilitate the resolution of the unallowable costs with the DEA. Since the DEA approved and paid these costs to Conduit, it is the responsibility of the DEA to work with Conduit to resolve these costs, which we indicated in our recommendation for these costs.

Conduit neither agreed nor disagreed with subpart e in its initial response. **We agree with Conduit's comment in its** initial response that the DEA 2852.242 contract clause applies to the final invoice for the contract. As a result, we removed the part of the recommendation regarding the final invoice from the final report. With respect to the requirement that the COR be notified upon task order completion, in its November 2017 response, Conduit stated that the DEA directed Conduit to provide this information to the TM. However, Conduit did not provide documentation of these **instructions or documentation to support the DEA's modification** of this contract requirement with its response.

Conduit neither agreed nor disagreed with subpart f in its initial response. As stated in the report, in November 2016, when we initially asked Conduit officials about this requirement, they explained that Conduit was testing a pilot of a fully automated task order system, but the system was not fully operational. In its initial response, Conduit officials updated their answer by explaining that this system has been in place since December 2015. However, Conduit did not provide any documentation to support its use of this system. **In Conduit's November 28, 2017 response**, Conduit stated there is confusion between its automated task order system and the combining of this system to its payroll system; Conduit claims the combining of the two systems was the pilot of the fully automated system. Conduit maintains that its automated task order system was operational in 2015 and stated it provided screenshots of its system with its response. However, this documentation was not submitted with any of its responses. Further, the contract stated this system shall facilitate the entry, tracking, updating, and status checking of task orders, including invoice and payment information. Conduit has not provided any documentation with its responses to support that its system has the capabilities required by the contract. While Conduit stated in its response that the system was operational in 2015, which is 3 years after the contract was awarded, Conduit has not provided any documentation with its responses to support when the system was operational.

Conduit neither agreed nor disagreed with subparts i and j in its initial response. Conduit provided a screenshot of the CPARS system, in its initial response, which showed that the Contractor Performance Assessment Report for the base year October 31, 2012, to October 30, 2013, was completed on February 7, 2014. It also showed Contractor Performance Assessment Reports for the option years between October 31, 2013, and October 30, 2016, were all completed in April 2017 after we requested the reports from the DEA during our audit. While Conduit provided this information, we requested the Contractor Performance Assessment Reports from the DEA. As stated in our report, DEA officials explained that the contract was mistakenly archived in CPARS and CPARS did not generate any email requests to the appropriate personnel to submit the assessment reports. The DEA has not

submitted any documentation to support that contractor performance assessment reports were completed.

Conduit agreed with subparts k and l in its initial response. Conduit stated that it attempts to receive post-performance feedback.

Conduit neither agreed nor disagreed with subpart n in its initial response. Conduit stated that it should have verified that the sample report contained all of the reporting requirements. Conduit stated that it has added the missing information to its Monthly Administrative Reports as of September 10, 2017. Conduit also stated that the information we identified that was missing from the financial statement portion of the Administrative Report was included in the payroll records Conduit provided during the audit. However, the payroll records provided by Conduit included data for all its linguists including those who worked on other contracts that were not part of this audit. We could not use this data to identify an accurate list of the linguists who worked under the contract or the hours worked by each individual. Although required by the contract, the payroll data also did not identify the languages translated by each linguist. Conduit acknowledged in its initial response that to provide contract-specific year-to-date totals for each linguist would have required Conduit to generate a special report. However, the contract required this information to be included in each Administrative Report submitted to the DEA each month, so the information should have been readily available. Conduit did not provide the special report it references in its initial response, so we are still unable to verify whether Conduit can readily produce this information.

This recommendation can be closed when we receive evidence that each of **these matters are addressed based on the DEA's mitigation strategy that** includes updates to policy, training, and oversight.

5. Ensure corrective actions are taken to address contract quality assurance:
 - a. Develop its own QASP for the contract to assess the quality and timeliness of services performed by the contractor.
 - b. Develop a QA program and procedures for reviewing and validating linguist work to ensure the work is reliable, consistent, and accurate.
 - c. Establish procedures to ensure the COR and TM review **Conduit's QA plan on a regular basis, including any updates or** revisions, and ensure that Conduit is completing QA responsibilities in accordance with its plan.
 - d. Ensure that the TMs notify the Contracting Officer whenever Conduit is unable to satisfy a task order requirement and that

the Contracting Officer enforce the contract requirements and address any issues of non-compliance, including documenting the non-compliance in CPARS.

- e. Determine whether other methods should be used to obtain linguists for languages it requires that are not the main languages required by the contract, and develop policy and procedures for obtaining linguists fluent in those languages if contractors are unable to meet language requirements, such as utilizing the NVTC, **to reduce the risk of the DEA's requirements** not being met.

Resolved. The DEA concurred with our recommendation. The DEA stated in its response that it will work to develop a Quality Assurance Surveillance Plan (QASP) to address contract quality, and assess the quality and timeliness of services performed by the contractor based on the terms and conditions of **the contract. Procedures will be established to ensure Conduit's QA plan is reviewed on a regular basis.** The DEA concurred that the Contracting Officer should be notified by the Program Office when the Agency is aware of non-compliance. However, the DEA believes that the notification should be submitted through the COR instead of the TM. The DEA will review other methods and procedures for **identifying linguists to support "hard to find"** languages, and will develop policy and procedures for obtaining such services. Upon completion of these tasks, the DEA will provide OIG supporting documentation to reflect its efforts.

Conduit neither agreed nor disagreed with subparts a, b, and c in its initial response. Conduit stated in its initial response that, although the DEA did not create a QASP, the quality control activities were still being performed. Conduit stated in its initial response that our statement relating to Conduit not enforcing the QA plan was factually inaccurate. We disagree. During our audit, we found, and Conduit confirmed, checklists and other documentation from the QA plan that were not being completed. Neither Conduit nor the DEA provided any evidence of a verbal agreement to deviate from the checklists required by the QA plan. Furthermore, Conduit stated in its initial response, the use of the checklists had been reinstated. Conduit submitted documentation with its November 2017 response which supported that Conduit had reinstated the checklists starting in November 2016, after the initiation of our audit. Conduit also made changes to personnel with QA responsibilities during the contract, but did not update its plan or receive approval from the DEA to make these changes. In its November 2017 response, Conduit stated that it had been enforcing its QA plan, but it had not been completing the checklists. However, we believe that enforcing the plan included completing all the requirements identified in its plan. **Therefore, Conduit's response validates that it was not enforcing its QA plan and our statement is accurate.**

Conduit did not respond to subparts d and e in its initial response. In comments submitted to the draft report with its November 2017 response, Conduit stated that, for languages not listed in the *Required Languages* section of the contract, linguists needed to be qualified linguistically, but were not required **to have been "cleared"** prior to working on the contract. We disagree. The *Foreign Language Requirements* section of the contract stated that the contractor shall provide, on an as needed basis, qualified linguists in languages other than the languages found in the *Required Languages* section of the contract, Section J, Exhibit 5. The contract further requires that Conduit employees not be assigned to perform services until Conduit has been notified in writing that the individual has been approved by DEA security personnel. Additionally, the DEA stated in its response to the Management Advisory Memorandum, in Appendix 4, that each Division Security Officer is aware that they may not utilize a linguist until DEA Security Programs grants a waiver or final approval of a linguist's **background** investigation. This further reiterates the importance of the contract requirement of a completed background investigation or approved waiver for every linguist.

This recommendation can be closed when we receive evidence that the DEA has developed an adequate QASP and policies and procedures related to **reviewing the contractor's QA plan. In addition, we will need to receive** evidence that policies and procedures have been created related to obtaining less common languages including a requirement that the Contracting Officer be informed of contract non-compliance.

6. Ensure Conduit consults with the DEA TMs and Case Agents prior to changing linguist assignments, and puts in place procedures to limit these changes as much as possible to prevent disruption of law enforcement investigations and ensure continuity of services.

Resolved. The DEA concurred with our recommendation. The DEA stated in its response that Conduit and SOD have been in communication regarding changes in linguist assignments. Procedures regarding these changes will be identified and incorporated to prevent disruption of law enforcement investigations.

Conduit neither agreed nor disagreed with this recommendation in its initial response. In its initial response to the draft report, Conduit reiterated that staffing is very complex and is based on multiple factors including linguist availability, agents requesting reassignments, logistics, activity of new wires, and case activation. Conduit also stated replacement of linguists is only done when unavoidable, and it has measures in place to minimize the disruption by allowing the linguist to be updated quickly regarding the investigation. While Conduit explained that replacement of linguists is a last resort, we believe that increased coordination with the DEA and formal procedures will **help fulfill Conduit's goal of minimal disruption to a case. In addition,** Conduit stated that its independent contractors are typically those that

handle exotic languages, while its employees are mainly Spanish linguists; and therefore, would not work on the same cases. However, Conduit did not provide any documentation to support this statement with its responses. Based on data provided by the DEA, we determined in our audit approximately half of its linguists are independent contractors.

This recommendation can be closed when we receive evidence of updated procedures related to staffing changes.

7. Ensure corrective actions are taken to address compliance with the SCLS:
 - a. Ensure Conduit works with the DOL to calculate the fringe benefits Conduit should have paid to linguists in accordance with the SCLS and DOL WD number 2012-0012 and ensure that Conduit pays those benefits to all affected linguists who worked under the contract.
 - b. Ensure Conduit works with the DOL to ensure it properly paid fringe benefits to linguists who worked on its other DEA regional linguist contract number DJD-13-C-0003.
 - c. Ensure Conduit keeps adequate records in compliance 29 C.F.R. § 4.6(g)(1) and work with Conduit to verify the correct total of employee linguists and independent contractor linguists who worked under the contract.
 - d. Work with Conduit to determine the proper price adjustments Conduit should have received, remedy any excess costs paid to Conduit for the improperly approved increases to G&A and profit, and ensure Conduit consults with the DOL on the payment of health insurance benefits to its linguists and the related payroll taxes associated with such benefits.
 - e. Ensure that Conduit submits the necessary documentation to support its requests for price adjustments.
 - f. Ensure the memorandum to the file for the price **adjustments includes the Contracting Officer's methodology** for determining how a price adjustment is accurate and valid, and in accordance with the DOL WD and the FAR.
 - g. Review the PACT User Guide and Department of Navy Desk Guide for Service Contract Price Adjustments to identify best practices and use them to develop DEA-specific guidance for use by contracting officials administering DEA service

contracts, including reviewing and approving price adjustments.

Resolved. The DEA concurred with the overall intent of the recommendation, but requested a modification to subparts 7a-c. The DEA states that recommendation subparts 7a and 7b are outside the DEA's area of authority. The DEA can, however, make this request of Conduit and report back to the OIG on what Conduit provides. With respect to subpart 7c, the DEA stated it can remind Conduit of the 29 C.F.R. § 4.6(g)(1) reporting requirement, but cannot itself verify the correctness of Conduit's reporting. The DEA further stated that 29 C.F.R. § 4.6(g)(1) requires the contractor to only provide these documents to authorized representatives within the Department of Labor Wage and Hour Division. We understand that the DEA is not responsible for enforcing that Conduit makes proper payments to individual employees or ensure proper payments were made to affected employees. The intent of the recommendation subparts 7a and 7b is for the DEA to ensure that Conduit works to resolve the concerns we identified related to SCLS compliance with the Department of Labor and provide support to show that Conduit worked with the Department of Labor to resolve the concerns. We also agree that the DEA is not responsible for enforcing Conduit's compliance with 29 C.F.R. § 4.6(g)(1); however, the information that Conduit is required to maintain in compliance with the C.F.R. includes information for the linguists who worked under the DEA contract. As we identified in the report, we were unable to determine the accurate number of linguists who worked under the contract based on the records Conduit provided to us. Additionally, the contract requirements include submitting a report which include year-to-date totals of linguist hours per language. In order to accurately report this information, Conduit needs to keep adequate records. Thus, we recommended that the DEA ensure Conduit keeps adequate records in order to verify the number of linguists working under the contract. This would also help facilitate Conduit's compliance with 29 C.F.R. § 4.6(g)(1) in addition to the DEA's reminder to Conduit of the 29 C.F.R. § 4.6(g)(1) reporting requirement.

In response to the remainder of the recommendation, subparts 7d-g, the DEA stated it has already completed a modification to re-adjust prices and will remedy the excess costs with the established procedure to remedy unallowable costs. The DEA stated it is providing training to its contracting staff regarding the SCLS and relevant price adjustments. Once the training is completed the DEA will provide a copy of the training documentation. Lastly, the DEA stated it will review the PACT User Guide and the Department of Navy Desk Guide for Service Contract Price Adjustments for administering DEA service contract and approving price adjustments. The DEA provided documentation with its response to support the modification it issued to the contract to re-adjust prices. For subpart e, the DEA did not specifically identify action it will take to ensure that Conduit submits the necessary documentation to support price adjustment requests and that the

memorandum to the file for the price adjustments include the Contracting Officer's methodology for determining the price adjustment.

We acknowledge that the DEA reached out to the Department of Labor requesting assistance or guidance as to how to properly calculate price adjustments. However, the corrections the DEA has made to re-adjust the contract prices are not sufficient to fully address the concerns we raised in this report regarding the price adjustments made to the contract. While the corrections the DEA made addressed the unallowable overhead or general **and administrative expenses and also questions regarding workman's** compensation insurance, the corrections were only made to the last price adjustment that the DEA incorporated into the contract for the final option year period. As we highlighted in this report, Conduit received five price adjustments under the contract and we believe the concerns we identified affected each adjustment, which compounded each time there was a new price adjustment. Thus, in order to adequately address our concerns and determine the correct price adjustment and the total of improperly paid costs, the DEA needs to review each price adjustment beginning with the first **adjustment. Additionally, the DEA did not address Conduit's inclusion of** administrative costs and payroll taxes for fringe benefits paid on behalf of employees to a third party administrator, which we discuss in further detail **below in response to Conduit's comments.**

Conduit neither agreed nor disagreed with subparts 7a and 7b in its initial response. Conduit stated that it has modified its vacation and holiday policies to comply with the Service Contract Labor Standards. Additionally, Conduit stated it will provide updated statements of accrued benefits to all past and present linguists, and confirm with the Department of Labor that it performed these calculations correctly.

Conduit neither agreed nor disagreed with subpart 7c in its initial response. Conduit stated that throughout the audit we requested specific custom reports that Conduit would have difficulty supplying in an expeditious timeframe. Conduit maintains that all of the data does exist, and could be provided in the format requested, but the audit report characterized this as an inability to supply or collect the data. We disagree. Specifically, 29 C.F.R. § 4.6(g)(1) requires contractors to maintain records for all employees who work under a contract subject to the Service Contract Labor Standards. While Conduit provided payroll records during the audit, its records included data for all its linguists including those who worked under different contracts than the one we reviewed for this audit. After discussions with Conduit, we modified our draft audit report to reflect that the information was not readily available. In addition, all of the data requested throughout our audit was based on either FAR, C.F.R., or contract requirements. Therefore, this data should have been readily available.

Conduit neither agreed not disagreed with subpart 7d in its initial response. However, Conduit did agree in its initial response that there is a prescribed

method for calculating price adjustments, and its past methodology was not compliant with that method. Conduit stated it has converted to the methodology specified in the audit report. Conduit also stated in its response that the fringe benefits health insurance payments made to the third party **were not made from the employer's funds for the employees, but rather withheld from and paid on the employee's behalf to Conduit's third party administrator** for its benefit plans. Conduit stated that because these benefits make up the **employee's compensation and the expenditures are not covered under a section 125 cafeteria plan**, the benefit payments are properly included in taxable wage of employees.

As noted in our report, we question whether it is appropriate to apply payroll taxes to health insurance payments for employee linguists. According to the Department of Labor Prevailing Wage Resource Book 2010, an employer may discharge his or her obligation to provide Service Contract Labor Standards fringe benefits by paying the specified fringe benefit contributions to a trustee or third person pursuant to a bona fide fund plan or trust on behalf of covered employees. Examples are life or health insurance, pension plan or retirement plans. Further, to be considered a bona fide fringe benefit for purposes of the Service Contract Labor Standards, a fringe benefit plan must constitute a legally enforceable obligation which meets specific criteria such as the fringe benefit plan must be specified in writing to the affected employees. During the audit, Conduit officials explained it uses a third party contractor to administer employee fringe benefits, including a health insurance plan, and provided documentation that was also provided to its employees for the health insurance plan. This is in line with Department of Labor guidance, which is why we recommended Conduit consult with Department of Labor to ensure fringe benefits are properly paid.

Furthermore, we examined the website for the third party administrator used by Conduit, which highlights that every dollar paid by a contractor, like Conduit, that is used to provide bona fide fringe benefits, such as the health insurance plan offered to its employees, is exempt from payroll taxes such as Social Security and Medicare taxes, both federal and state unemployment insurance, general liability insurance, and in most states, workers compensation insurance. We also note Internal Revenue Service Publication 15B, which states that employer-paid health insurance for employees is not considered wages and is exempt from federal withholding.

Conduit neither agreed nor disagreed with subpart 7e in its initial response. In its initial response to the draft report, Conduit stated that actual wage records, documents supporting accompanying costs and fringe benefit costs were considered when reviewing price adjustments. However, the analysis required was minor due to the circumstances surrounding the implementation of the Wage Determination and the general Title III linguist labor market. Conduit identified in its initial response that the Wage Determination was so significantly above the normal market wages for Title III linguists that the Wage Determination became the universally adopted

labor rate for linguists. Additionally, it believed that all health and welfare costs were subject to payroll taxes, and therefore a break out between employees and independent contractors was unnecessary. We disagree. Because of the different effect independent contractor and employee classifications have on the calculation of the price adjustments, it is necessary for Conduit to provide **wage records for DEA's review of price adjustments**.

Conduit did not respond to subparts f and g in any of its responses.

Lastly, Conduit made several comments in its initial response, regarding Table **6 Conduit's Fixed Billing Rates with Approved Price Adjustments**. Conduit stated there are a number of issues combined with these allowed rates, but since it did not have access to the calculations that were used to develop these revised rates it cannot precisely pinpoint the issues that make **these rates diverge from its calculations. We did not revise any of Conduit's rates**. The rates we used in Table **6 are Conduit's revised rates**, which it submitted and the DEA approved and incorporated into the contract via modification, as a result of revisions to the Wage Determination and exercising an option year. The red amounts in Table 6 represent the differences between the rates and the only calculations we made in the table were simple subtraction.

This recommendation and the related subparts can be closed when we receive documentation from the DEA to support that: (1) Conduit worked with the Department of Labor to resolve our concerns related to the payment of fringe benefits to its linguists; (2) the DEA determined the proper price adjustments that Conduit should have received and any accompanying costs paid to Conduit for linguists who did not receive fringe benefit cash payouts for each adjustment it incorporated into the contract; (3) the DEA verified the number of linguists working under the contract; (4) Conduit submits the necessary documentation to support its requests for price adjustments; (5) the memorandum to the file for the price adjustment includes the **Contracting Officer's methodology for** determining how a price adjustment is accurate and valid; (6) **and the result of the DEA's review of the PACT User Guide and Department of Navy Desk Guide for Service Contract Price Adjustments** to identify best practices for use in developing DEA-specific guidance for use by contracting officials administering DEA service contracts.

8. Ensure the Contracting Officer adequately reviews contractor rates to ensure that the rates are fair and reasonable for any order issued to another linguist contractor, which could include using GSA FSS **contracts to meet the DEA's needs**.

Resolved. The DEA concurred with our recommendation. The DEA stated in its response the Contracting Officer will review the contractor rates to determine if they are fair and reasonable in accordance with applicable FAR

regulations and the GSA FSS contracts. Upon completion of the review, the DEA will provide the OIG the documented results.

Conduit did not respond to recommendation 8 in any of its responses.

This recommendation can be closed when we receive evidence that a review of the rates charged by contractors other than Conduit has been completed, and the rates were determined to be fair and reasonable.

9. Work with Conduit to review its fixed billing rate calculations and ensure its calculations are accurate.

Resolved. The DEA concurred with our recommendation. The DEA stated in its response the COR will review the contract fixed billing rate calculations to **ensure the contractor's calculations are accurate. Once completed, the DEA will provide the OIG the documented results.**

Conduit neither agreed nor disagreed in its initial response. Conduit stated in its initial response that it modified its vacation and holiday policy to cover all linguists. Conduit stated that reassigning the Regional Program Manager duties to existing management personnel did not increase the billing rate nor the number of hours billed. However, we maintain that the existing **management personnel's salaries or wages were already included in the billing rate** either within the overhead rate or other apportioned costs. Therefore, the apportioned Regional Program Manager costs inflated the billing rate paid by the DEA.

Although Conduit officials told us that it divided the Regional Program Manager duties amongst additional management or field division personnel in different positions, it never updated its QA Plan to reflect these personnel changes or that it delegated the responsibilities of the Regional Program Manager to other personnel. Additionally, Conduit provided documentation with its November 2017 response to support some of the Regional Program Manager duties; however, the documentation did not support that all the Regional Program Manager QA duties were being performed. We identified **tasks in Conduit's** QA Plan that were specifically assigned to the Regional Program Manager, but were not completed, including the Monthly QA Checklist. **Conduit's documentation supported that the** Monthly QA Checklist had not been completed until November 2016, after our audit began. As a result, we believe the DEA did not receive the QA services it agreed to in the contract.

This recommendation can be closed when we receive evidence that a review **of Conduit's fixed billing rates has been completed and the rates are accurate.**

10. Ensure Conduit notifies the DEA of staffing changes that affect management and quality control of the contract.

Resolved. The DEA concurred with our recommendation. The DEA stated in its response the COR will ensure that the contract language requires that Conduit notify the COR when staffing changes occur that may affect management and control of the contract.

Conduit neither agreed nor disagreed in its initial response. In its initial response to the draft report, Conduit reiterated that the duties of the Regional Program Manager were divided between existing management personnel. However, this position was specifically identified in both Conduit's Transition and QA Plans as an individual with significant administrative and QA responsibilities. Conduit's Transition Plan specifically stated that the Regional Program Manager was to serve as the Operations Manager and act as the information link among Conduit management, field division personnel, and DEA Agents.

The Regional Program Manager was responsible for all reporting requirements including funding, tasking, personnel, security, and caseload information and QA. According to both the contract and Conduit's QA plan, any revisions to Conduit's QA plan, including who was responsible for completing QA activities assigned to the Regional Program Manager, were required to be approved in writing by the Contracting Officer prior to implementation. Conduit did not submit any documentation with its responses that indicated the DEA approved these changes.

This recommendation can be closed when we receive evidence that language related to staffing changes has been added to the contract.

11. Develop a methodology and procedures for solicitation development that accurately describes the need to be filled through service contracting. This may include a review of the contract terms for each location to determine whether: (1) the minimum number of linguists are accurate, (2) the minimum number of linguists reflect the actual need of the locations, (3) the contract terms should allow for reimbursement of travel costs for certain situations, and (4) there is a more efficient method to provide linguist services to smaller locations.

Resolved. The DEA concurred with our recommendation. The DEA stated in its response that it will review its current methodology used to determine the linguist needs for each location. The DEA will determine whether improvements are warranted in the form of contract terms or better education and communication regarding the methodology and its application. The DEA will share the results of this assessment and any actions taken.

Conduit did not respond to recommendation 11 in any of its responses.

This recommendation can be closed when we receive evidence of updated methodology or procedures related to identifying contract needs.



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