

Transcript: "Podcast: Audit of the Drug Enforcement Administration's Asset Forfeiture Program Task Orders Awarded to Maximus, Inc., for Financial Investigative Services" April 2018

Stephanie Logan (SL): Welcome to the latest podcast from the Department of Justice, Office of the Inspector General. My name is Stephanie Logan and I'm a Public Affairs Specialist in our office.

Today we released a report that evaluated two task orders, issued by the Drug Enforcement Administration, or DEA, to Maximus, Incorporated to procure financial investigative support for the Asset Forfeiture Program. The task orders were issued under a larger contract awarded by the Justice Management Division, or JMD.

The report identified a number of issues with the DEA and JMD's administration and oversight of the contract and its task orders. First, the DEA was heavily involved in the hiring of contract personnel, many of whom were former DEA employees. Second, the manner in which the DEA administered the task orders demonstrated several characteristics of a personal services contract, which federal regulations prohibit. Third, the DEA approved Maximus charging rates for two Subject Matter Experts that did not meet specific contract qualifications, which placed the government at risk of overpaying for services. The review also raised questions about the fact that personnel were classified as independent contractors rather than as employees.

I'm here with Shenika Cox an Assistant Regional Audit Manager and Tonya Morrison a Program Manager, both from our Audit Division, to discuss the findings in greater depth. Thanks to you both for joining me.

TM: Thank you for having us, Stephanie.

SL: So first, a background question: What is a task order? I understand it's a part of a contract – but, Shenika, what specifically does a task order do?

SC: Well, a task order is a way to divide the requirements of a contract into smaller, measurable milestones toward achieving the ultimate goal of the procurement. Think of it as a miniature contract.

In this case, Maximus provided personnel to assist the DEA with the financial aspects of criminal drug investigations in support of the Asset Forfeiture Program. But the large contracts that support this particular program are *overseen* by the Justice Management Division. Several participating law enforcement components in the DOJ can issue task orders under the contract. So, for the task orders we examined, JMD and the DEA each had administration and oversight responsibilities.

SL: And what were the parameters of the task orders?

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- SC: The original contract was for one year, beginning in March 2008, with the option to extend over 6, 1-year periods. During our audit, the DEA extended the task orders 2 years beyond the 7 year life of the larger contract. And as of the completion date of the last task order, the DEA had paid Maximus over 85 million dollars.
- SL: Your report found that the DEA was heavily involved in the hiring of contract personnel, many of whom were former DEA employees. Tonya, why is this an issue?
- TM: We had concerns about the hiring process for personnel at Maximus and its subcontractor, Professional Risk Management. We found that many DEA Supervisory Agents were heavily involved in the selection process, even though the contract didn't provide for that. Even though the DEA was selecting contract personnel, it did not maintain documentation to substantiate its candidate selections. Oftentimes, former DEA employees were selected and returned, as contractors, to the same office that they previously worked at. Specifically, we found that 40 percent of the contract personnel were former DEA employees, averaging 22 years of service prior to retirement from DEA. Although this may not have violated any law or regulation, we recommended that DEA and the Department look more closely at its actions in selecting contract personnel and keep records as to why it made contract personnel selections.
- SL: One of the findings of your report pertained to how the contract personnel interacted with DEA employees and what type of duties the contract personnel were actually doing. What specifically were the issues you identified?
- TM: The Federal Acquisition Regulation prohibits contractors from providing what are called personal services unless statutory authority is obtained. Personal services involve contract personnel serving or functioning in ways that are indistinguishable from government employees. On these task orders, the way contract personnel worked on the contracts blurred the lines between government employee and contractor work, and thus demonstrated characteristics of a personal services contract. For example, contractors were supposed to help identify assets eligible for seizure and forfeiture by analyzing evidence and third-party databases. But we found that the DEA embedded many contract personnel on its Tactical Diversion Squads, Financial Investigations Teams, and Organized Crime Drug Enforcement Task Forces. These contractors also directly reported to DEA employees on-site because there were no co-located project managers.

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- SL: It sounds like there's a big difference between the role the contract intended for these workers and what they actually did. Is that distinction important here?
- TM: That's a great question, Stephanie. The distinction is important. Federal regulations allow the government to use contractors to support government efforts. In addition to personal services, a contractor cannot perform inherently governmental functions. And among the functions explicitly named as inherently governmental is the direct conduct of criminal investigations.
- SC: That's right, Tonya. The subcontractor, Professional Risk Management, provided most of the contract personnel. Their representatives told us that the contract personnel merely provided the services that the DEA requested. From their perspective, that put them in a difficult position. They say in their response to our report that they did what the DEA asked them to do, even if it seemed outside of the scope of a support role. But in any event, both the DEA and JMD officials agreed that enhancements are needed in two areas: (1) policies and procedures, and (2) training regimens for government personnel interacting with contractors.
- SL: Can you talk about your audit findings related to the Subject Matter Experts that did not meet contractual requirements?
- SC: Absolutely. We found that the DEA accepted and paid for two Subject Matter Experts that did not meet the contractual education requirement of having a Master's Degree. Without that degree, they were not eligible for the higher rate paid for Subject Matter Experts. The payments to these two individuals resulted in the DEA paying a 485 thousand dollar premium over what it would have paid if they had served in a subordinate labor category.
- SL: Finally, I'd like to discuss the manner in which Maximus and its subcontractor, Professional Risk Management, classified personnel. Your audit found that they classified all of the task order personnel as independent contractors, rather than employees of the companies. Can you explain why this is significant?
- SC: Sure, but please, bear with me, this is going to get a little technical. Under federal law, regardless of their title, individuals are considered employees, not independent contractors, if the nature of their work meets the Fair Labor Standards Act definition of employment. The overarching question being whether the totality of the worker's circumstances indicate that the worker is economically dependent on the employer. We found that the workers demonstrated characteristics suggesting a high level of economic dependence on Maximus and Professional Risk Management, which raises the

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question of whether these personnel should have been classified as employees, rather than as independent contractors.

SL: Is this an ongoing issue that continues under the new Asset Forfeiture Program contracts?

SC: Actually, Maximus no longer has a contractual relationship with the Department. But Professional Risk Management has reclassified as an employee almost every worker it currently has performing similar services under the follow-on contract.

SL: Shenika, Tonya, thanks so much for taking the time to speak with me today.

TM: Thank you, Stephanie. We really enjoyed talking to you about our report.

SL: That's it for today. To read the report, you can visit our website, oig.justice.gov, or you can find it on oversight.gov. You can also follow us on twitter @JusticeOIG. Thanks for joining us.

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