M E M O R A N D U M

FINAL AUDIT REPORT WITH RECOMMENDATIONS
Internal Operations No. 12-001

Washington Metropolitan Area Transit Authority

SUBJECT: Review of Contract CQ 7068 – Safety Management Assessment and Enhancement Program

DATE: February 14, 2012

FROM: OIG – Helen Lew ***/S/***

TO: GM/CEO – Richard Sarles

This **Final Audit Report** entitled, *Review of Contract CQ 7068 – Safety Management Assessment and Enhancement Program*, presents the results of our audit. The objectives of the audit were to determine whether: (1) the contractor performed in accordance with the terms of the contract, (2) payments to the contractor were proper, and (3) the Washington Metropolitan Area Transit Authority (WMATA) provided adequate oversight.

BACKGROUND

WMATA's desire to improve its safety performance record was based on a number of high profile bus and rail accidents in 2005, 2006, and 2007 that resulted in deaths and/or injuries to passengers, pedestrians, and employees. These accidents raised both internal and external questions about the safety of WMATA's Bus and Rail systems. WMATA also wanted to reduce rising costs associated with workers' compensation and third party liability claims. As a result, the former General Manager sought the help of a consultant to improve safety within WMATA.

WMATA issued a Request for Proposal (RFP) on February 7, 2007, for a comprehensive workplace safety management approach that improves WMATA's safety program and record, changes the culture of WMATA's organization, increases accountability, and reduces costs expended for workers' compensation. The following indicators were to be reduced by 50 percent over five years:

- Lost time injury cases per 100 employees
- Bus passenger injury rates per million bus passenger miles
- Bus collision rates per 100,000 vehicle miles
- Rail passenger injury rates per million rail passenger miles, and
- Rail transit facility occupant injuries per million passenger miles

On April 10, 2007, WMATA awarded contract CQ7068 (Safety Management Assessment and Enhancement Program) to DuPont Safety Resources (DSR or contractor). The contract[1] was for five years.

DSR's compensation consists of performance payments based on safety related savings to WMATA, which is defined as a reduction in the developed workers' compensation claims rate, developed bus incident rate, and developed rail incident rate as compared with the established baseline rates for these metrics.

The Department of System Safety and Environmental Management (SAFE) serves the Metro system by conducting systematic and proactive analysis and surveillance of operational safety for passengers and employees, as well as all agency facilities, operational work areas, and equipment. SAFE is also responsible for providing a Project Manager and Contracting Officer Technical Representative (COTR) for the DSR contract.

[1]The contract is comprised of: (1) the Notice of Contract Award letter, dated April 10, 2007; (2) Revised RFP, dated April 6, 2007; (3) DuPont's Technical Proposal, Volume I, dated March 26, 2007; (4) DuPont's Safety Resources Refined Compensation Model, dated April 5, 2007; (5) DuPont's Revised Financial Proposal, Volume II, dated June 2, 2008; (6) DuPont's Contract Information, Volume III, dated March 26, 2007; and (7) Contract Modification, M00I, dated March 25, 2011.

The Office of Risk Management (RISK) is responsible for controlling and financing the following categories of risk for Metro: liability for employee injury, bodily injury and property damage suffered by third parties, financial loss suffered by third parties and employees, and physical damage to and loss of WMATA property and assets. RISK oversees the following functional areas: workers' compensation, third party claims, and insurance. RISK is also responsible for accounting for all workers' compensation claims and third party liability incidents, and in coordination with the COTR and DSR, determining qualified claims for the DSR contract.

After the contract was awarded, some members of WMATA's executive staff expressed concerns regarding: (1) the need for the contract, (2) the gain-sharing[2] contract awarded, (3) the amount of compensation paid DSR under the contract, (4) the improvements made in the organization's safety structure, and (5) whether WMATA has realized any reduction in the numbers and costs of workers' compensation claims and third party liability incidents.

In early 2010, the Director of RISK requested Aon Global Risk Consulting (Aon)[3] to conduct an analysis of the DSR contract. Aon's *Analysis of DSR Safety Contract and Amendments for WMATA*, dated May 4, 2010, identified several concerns with the contract, including: (1) the performance payment formula appears to utilize an excessively high standard cost metric for workers' compensation when compared with ultimate losses in Aon's annual actuarial report, (2) a similar concern for third party liability formulas, and (3) the need for clarity on the impact of the contractor's programs and policies that result in reduced safety related costs.

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[2] "Gain-sharing" is an agreement in business and contract law where an organization and a service provider (contractor) agree to share financial gains as a result of improvements and/or savings realized by the organization from services provided by the contractor.

[3] Aon is a consulting firm retained by WMATA to conduct an annual review of its workers compensation and third party liability programs.

AUDIT RESULTS

As of June 30, 2011, WMATA paid DSR $13,687,899 for services under the contract. The contract was modified in March 2011 to place a cap of $950,000 on the quarterly payments to DSR. We found that the contractor generally met the deliverables in the contract. However, we found that payments to DSR were not properly supported with clear ties to delivered services, and some of the payments to DSR were not properly calculated. In addition, WMATA did not adequately oversee the contract. Specifically, we found that the contracting officer did not detect: (1) two separate inflation factors in the contractor's standard claims and incident costs, (2) DSR's target goals for reducing workers' compensation claims and third party liability incidents were deleted from the contract, (3) the program office had not reappointed a project manager after the previous manager left in October 2009, and (4) the Office of Procurement and Material (PRMT) did not adequately assess the benefits and risks associated with using a gain-sharing contract.

In the General Manager and Chief Executive Officer's (GM/CEO) February 10, 2012, response to a draft of this report, he concurred with our findings and recommendations. The GM/CEO also cited actions taken or planned to address the OIG concerns expressed in the recommendations. The complete text of the GM/CEO's response is included as Attachment I to this report.

Finding 1 – DSR Generally Met Deliverables in the Contract

We generally found DSR provided the deliverables required in contract CQ7068 by delivering a safety management approach. DSR's comprehensive approach to improving safety management consists of a mixture of management systems' design and development, work process redesign, and organizational development and training.

Specifically, the DSR safety management approach included: (1) establishing a Program Management Office to manage the overall contract effort, (2) assessing the current safety state of WMATA by conducting an assessment to understand WMATA's key strengths and weaknesses that affect workplace safety performance, (3) defining WMATA's desired future safety culture and environment by establishing objectives for improvement based on the results of the assessment, (4) developing specific, realistic implementation plans and associated metrics that will lead to the desired outcomes, (5) working with WMATA to implement the plan by performing appropriate analyses and building skills and capabilities throughout the organization, and (6) assigning a project manager who will, along with WMATA's appointed project manager, lead the Project Management Office. We found these deliverables were carried out according to DSR's Volume I: Technical Proposal and Metro Safety Assessment Report.

We found workers' compensation and third party liability claims reported by RISK for fiscal years 2007 through 2011 showed a general decrease in numbers. Table-1 shows changes in WMATA's total number of claims and related expenditures for fiscal year 2005 through fiscal year 2011. Workers' compensation claims in fiscal year 2011 show a decrease of 456 claims or 38 percent from claims of 1,212 reported in fiscal year 2005. Similarly, third party liability claims of 2,254 in fiscal year 2011 decreased 62 percent from claims of 5,923 reported in fiscal year 2005.

Reductions in the number of claims generally correlate to a reduction in the cost of claims where inflation is not a factor. This was the situation for third party liability claims but not for worker's compensation claims. In the last two fiscal years, the change in the costs (expenditures) of third party liability claims decreased while the cost of workers' compensation claims increased. This may be due to the severity of the claims that were filed.

Table-1

Workers' Compensation and Third Party Liability Claims and their Respective Expenditures from Fiscal Years 2005 to 2011

	Worker's Compensation Claims					Third Party Liability Claims			
Fiscal Year	Claims	% Change fr. 2005	Expenditures	% Change fr. 2005		Claims	% Change fr. 2005	Expenditures	% Change fr. 2005
FY 2005	1212		$ 15,893,196			5923		$ 8,250,681	
FY 2006	1227	0.01	$ 15,312,164	-0.04		5626	-0.05	$ 11,136,845	0.35
FY 2007	1184	-0.02	$ 13,065,221	-0.18		5994	0.01	$ 6,437,360	-0.22
FY 2008	1087	-0.10	$ 15,569,457	-0.02		6171	0.04	$ 11,986,313	0.45
FY 2009	954	-0.21	$ 19,470,918	0.23		6053	0.02	$ 15,625,419	0.89
FY 2010	913	-0.25	$ 18,816,432	0.18		4531	-0.24	$ 9,998,607	0.21
FY 2011	756	-0.38	$ 22,673,555	0.43		2254	-0.62	$ 8,368,928	0.01

We could not tell if the overall reductions in workers' compensation and third party liability claims were a direct result of implementing the DSR's approach at WMATA because we were unable to measure the impact of DSR's work. This matter is further discussed in finding number 2 of this report.

Finding 2 - Payments to the Contractor Were Not Properly Calculated and Clearly Linked to Performance

A. WMATA payments to DSR were not properly calculated

During our audit, we found RISK and DSR's count of some workers' compensation claims and third party liability incidents did not agree with the supporting source data maintained by RISK. During RISK and DSR's quarterly review of claims, the third party liability claims are converted to the number of Bus and Rail Incidents. DSR used the counts of claims and incidents to calculate its quarterly performance (share) payments and its effort to reduce WMATA's workers' compensation claims and third party liability incidents. Appendix I provides detail information on the calculation of the three types of performance payments -- workers' compensation, third party liability-Bus, and third party liability-Rail.

The supporting data maintained by RISK represents WMATA's official count of claims and incidents per quarter. The Risk and DSR counts should agree. If not, the quarterly payment and measurement of DSR's efforts to reduce WMATA's claims and incidents rates will not be correct.

As shown in Table-2 below, we noted differences between the number of workers' compensation claims and third party liability incidents maintained by RISK and the number used by DSR to calculate some of the quarterly payments. For the quarterly payments in question, DSR used a total of 254 workers' compensation claims and 1,491 third party liability incidents. However, the supporting data from RISK showed the count for workers' compensation claims to be 267, and the count for third party liability incidents to be 1,657, a difference of 13 and 166, respectively. If the count used by DSR is incorrect, WMATA overpaid DSR by approximately $750,852 for the period July 2007 through September 2009. The related quarterly payments were approved by the current and prior COTR.

Table-2

Quarterly payments with DSR and RISK differences in the count of Workers' Compensation Claims (WCC) and Third Party Liability Incidents (TPL)						
	Payment Qtr (Q)	**DSR Count**		**RISK Count**		**Difference**
WCC	Q1-FY08	129		128		-1
WCC	Q7-FY09	125		139		14
Total WCC		**254**		**267**		**13**
TPL	Q1-FY08	266		286		20
TPL	Q2-FY08	285		288		3
TPL	Q4-FY08	298		360		62
TPL	Q6-FY09	224		189		-35
TPL	Q7-FY09	227		313		86
TPL	Q9-FY10	191		221		30
Total TPL		**1491**		**1657**		**166**

We brought the discrepancies to the attention of RISK and the COTR in July 2011. As of December 5, 2011, RISK and the COTR have not reconciled the difference nor provided an explanation for the discrepancies.

We also found calculation errors on six invoices the COTR approved for payment to DSR. For example, the FY08-Q3 invoice amount paid to DSR for third party liability incidents in Bus was $51,512, whereas, the DSR performance share calculation amount was $40,447, a difference of $11,065. Similarly, the FY09-Q2 invoice amount paid to DSR for third party liability incidents in Rail was $130,177, whereas, the DSR performance share calculation amount was $121,541, a difference of $8,636. The payment errors on the six invoices, after some subsequent adjustments, amounted to a total overpayment to DSR in the amount of $19,267.

RISK is responsible for accounting for all workers' compensation claims and third party liability claims. RISK, in coordination with the COTR and DSR, determines qualified claims and converts the third party liability claims to Bus and Rail incidents to be used in calculating quarterly payment to DSR. These errors indicate that the invoices were not adequately reviewed by the COTR prior to payments.

According to the COTR Guide, Part 2, number 6 (b), the COTR is responsible for reviewing and processing an invoice for payment, determining if payment can be processed, inspecting the invoice for completeness, and accepting the invoice or notifying the contractor of any errors found in the invoice.

The United States Government Accountability Office (GAO) Internal Control Standards, Internal Control Management and Evaluation Tool, August 2001, states management reviews should consider appropriate control activities, such as reconciliations of summary information to supporting details and checking the accuracy of summarizations of operations.

B. WMATA payments to DSR are not clearly tied to the contractor's efforts to reduce WMATA's costs

We found WMATA payments to DSR may not be proper and justified because they are not clearly linked to the contractor's performance. Specifically, there is no clear way to separate the efforts of DSR from those of WMATA. The COTR authorized payments to the contractor without determining how the reduced safety related costs could be attributed to the contractor's safety management program.

According to the Revised Request for Proposal, Part III, Special Provisions, dated April 6, 2007, "It is the intention of WMATA to compensate the contractor from the savings (reductions) in WMATA safety related expenditures that can be attributed directly to the cost reduction plan that has been developed and implemented (with assistance from WMATA) by the contractor. It should be clear that, unless WMATA realizes reduced safety related costs that can be attributed to the programs and policies that have been developed and implemented jointly by the contractor and WMATA, no compensation will be owed the contractor."

The prior contracting officer (CO) informed us that WMATA was interested in measuring the results achieved by DSR in making WMATA a safer organization. He also stated payments to DSR are to be tied to reduction of incidents and accidents resulting in savings to WMATA in payments of cases and claims.

The COTR stated DSR's philosophy is to help embed safety programs into WMATA's operational and administrative management procedures and systems. However, she agreed there is no way to directly measure the effect these various programs have on WMATA's safety related costs, and there is no way to separate the efforts of DSR from those of WMATA. No performance measures were built into the gain-sharing contract to help determine this information. Aon in its analysis of the DSR contract also raised a concern about the safety related cost savings attributed to the contractor's program.

In 2010, the Chief Safety Officer (CSO) was concerned about the increasing amount of the quarterly payments to the contractor. The COTR stated several quarterly payments to DSR during 2010 exceeded \$1 million and the payment for the 3rd quarter of 2010 was approaching \$1.5 million. The CSO did not believe the work performed by the contractor justified the payment level even though the payments were made in accordance with the terms in the contract.

On November 11, 2010, the CSO and RISK management met with DSR. The CSO expressed his displeasure with the terms of the contract to DSR management, and they subsequently agreed to modify the contract to cap the quarterly payment at \$950,000 for the remaining five quarters. On March 25, 2011, the CO modified the contract's Volume II: Financial Proposal, Section 4, Article C, Payments due to DSR, by setting a cap on fees for services.

The CSO also requested that DSR adjust its work schedule to provide more technical and training support within SAFE and to decrease its hours of providing assistants on programs that WMATA has already implemented and/or is managing. According to the COTR, DSR agreed to reduce the hours they are currently spending on the contract.

We also determined the gain-sharing contract used to acquire safety advisory services may not have been the appropriate procurement vehicle, especially since the compensation was not clearly measured/linked to performance. This matter is discussed further in finding 3 of this report.

Recommendations

We recommend the GM/CEO:

1.1 Direct the CSO to ensure that the correct number of workers' compensation claims and third party liability incidents is used to calculate quarterly payments to the contractor, including reconciling differences between DSR and RISK to determine the amount of any overpayments during the course of the contract, and make the appropriate adjustments to the remaining payments to the contractor.

Finding 3 - WMATA did not Provide Proper Contract Oversight

We found WMATA management did not provide proper oversight over the contracting process and the contract. Specifically, we noted four situations where WMATA did not exercise proper oversight: (1) inflation increases were assessed twice in the contractor's standard claims and incidents costs, (2) target goals for reducing workers' compensation claims and third party liability incidents were deleted, (3) a full-time project manager was not appointed to manage the contract, and (4) PRMT did not adequately assess the benefits and risks associated with using a gain-sharing contract. Each of these situations is discussed in the following sections.

The GAO *"Standards for Internal Control in the Federal Government,"* stated "risk assessment," which is one element of the internal control framework designed by the Committee of Sponsoring Organizations (COSO), provides for an assessment of the risks the agency faces from both external and internal sources. Another element of the internal control framework is "monitoring." Internal controls should generally be designed to assure that ongoing monitoring occurs in the course of normal operations.

A. The contracting officer did not detect that the inflation factors were use twice in the contractor's standard claims and incident costs.

We found that DSR used two different inflation factors in developing its baseline costs and the rates for workers' compensation claims and third party liability incidents. Specifically, DSR used Aon's actuarial cost development factors to project WMATA's standard costs for workers' compensation claims and third party liability incidents. Aon's actuarial cost development factors include inflation factors. In addition, DSR applied annual inflation factors to the established baseline costs for workers' compensation claims and third party liability incidents.

The prior manager of Workers' Compensation did not detect the inflation rate factors were used twice in developing the standard costs for workers' compensation claims and third party liability incidents.

According to Aon, their actuarial cost development factors contain an element for inflationary increases in the costs of workers' compensation claims and third party liability incidents. These actuarial costs established the contractor's average baseline cost for a workers' compensation claim and a third party liability incident. We were unable to determine the exact amount of the inflationary amounts built into Aon's actuarial cost development factors. We found no documentation in the contract file to support an analysis of DSR's baseline costs for workers' compensation claims and third party liability incidents.

The prior manager of Workers' Compensation apparently did not know that Aon's actuarial cost development factors included an element for inflationary increases. As a result, she set additional inflation rates at 8.75 percent for workers' compensation claims and 5 percent for third party liability incidents. In the first year, DSR's baseline costs for workers' compensation was at $23,759 per claim, $17,255 per Bus third party liability incident, and $6,958, per Rail third party liability incident. After the first year, the baseline costs increased to $25,838 per workers' compensation claim, $18,118 per Bus third party liability incident, and $7,306 per Rail third party liability incident after applying inflationary rates of 8.75 percent and 5 percent, respectively. WMATA's quarterly payments to DSR are based on DSR's established baseline costs. DSR's payments are calculated using the contractor's established standard workers' compensation claim and third party liability incident costs, which includes Aon's actuarial cost and DSR's annual inflation rates.

DSR's Revised Volume II: Financial Proposal, Section III, HH, states that the Standard Claims Cost Inflation Factor shall be an agreed upon index between DSR and WMATA for workers' compensation claims that reflects annual inflationary increases in the Standard Claim Cost. An agreed upon inflation factor of 8.75 percent is applied each year on the anniversary date of the effective date. DSR's Revised Volume II: Financial Proposal, Section III, ii, further states that the Standard Incident Cost Inflation Factor shall be an index agreed upon by DSR and WMATA for each incident type in the Agreement to reflect annual inflationary increases in the Standard Incident Cost. An inflation factor of 5 percent is applied each year on the anniversary date of the effective date.

DSR's use of both the annual inflation factors and Aon's actuarial cost development factors resulted in the use of two inflationary factors to calculate the contractor's quarterly payments and additional costs to WMATA for the second and subsequent years of the contract. The managing director of RISK agreed with us that the inflation factors were use twice in the contractor's standard claims and incident costs when we brought this matter to his attention.

B. DSR's Target Goals for Reducing Workers' Compensation Claims and Third Party Liability Incidents were deleted from the Contract

We found in the process of modifying the DSR contract, the prior CO deleted DSR's target goals for reducing workers' compensation claims and third party liabilities incidents from the contract. The prior CO modified the contract to incorporate the lessons learned by WMATA and DSR, from the period April 2007 through June 2008, with the goal of improving the accuracy of the performance payments due the contractor at the end of each settlement period by incorporating a development factor. The contractor's target goals were originally included in the contractor's Volume II: Financial Proposal Financial, dated March 29, 2007. When the contract was amended in June 2008, the target goals for reducing workers' compensation claims and third party liabilities incidents were deleted.

We brought this matter to the attention of the Chief Procurement Officer, Managing Director of PRMT, COTR, CSO, and prior Project Manager in September 2011. They were all unaware of the omission of the contractor's target goals and could not explain how this happened. DSR's Quantitative Consultant told us that DSR intends to meet the target goals.

Failure to have written target goals makes it difficult for WMATA to hold DSR accountable for the target reduction goals set for workers' compensation claims and third party liability incidents and measure the contractor's performance.

C. SAFE did not reappoint a project manager to manage the Contract

We found the prior CSO did not prepare a Project Manager's position description with duties and responsibilities for managing the DSR contract. In addition, after October 2009, SAFE did not reappoint a full-time Project Manager.

Volume I: Technical Proposal of the contract, states WMATA will appoint a full-time Project Manager to directly manage the contract in collaboration with the DSR Project Manager. The DSR Project Manager was to work jointly with the WMATA appointed project manager to lead the Project Management Office. Jointly, both Project Managers were to develop a high-level work breakdown structure, and a master milestone chart for the engagement, which was to be developed collaboratively with key stakeholders from WMATA. The WMATA Project Manager was to be a senior level employee of sufficient management level to assign resources, and work with Department Heads to assist in the success of the program.

We noted that the former Deputy General Manager/Chief Operating Office and the former Assistant General Manager/System Safety Emergency Management appointed a Project Manager to work with DSR on May 29, 2007. We found that SAFE did not develop a position description for the Project Manager that clearly delineates the duties and responsibilities of this position. As we discussed earlier in this report, DSR's target goals for reducing workers' compensation claims and third party liability incidents were deleted from the contract. When we asked the former Project Manager how this happened, she stated the decisions regarding the DSR contract were made at a higher level. Since there was no clear guidance on the duties and responsibilities of the Project Manager, the former Project Manager did not review the amendment to the contract. Since October 2009, the contractor worked without a full-time WMATA Project Manager as an integral part of implementing the safety improvement initiatives.

The Manager of Compensation Programs within the Department of Human Resources stated that according to WMATA's business practice, a position description is created for any position that an employee may be assigned. This allows the employee to have clear, communicated objectives, duties, and responsibilities of the position. The employee's performance goals are created based on the position description.

D. PRMT did not adequately assess the benefits and risks associated with using a gain-sharing contract

We found the prior contract administrator (CA) noted several times in documents and emails during the contract evaluation and negotiating phase that the contractor's gain-sharing approach to the RFP was complicated and confusing. However, there were no indications that the prior CA sought advice on how to deal with the complex financial issues in the gain-sharing contract between WMATA and DSR.

WMATA's Procurement Manual, Chapter 13, Section 1312.1, Proposal Analysis, states the CO shall as appropriate, request and evaluate the advice of specialists in such fields as finance, law, contract audit, and others when complex problems involving significant matters need to be addressed.

The prior CO did not conduct a formal impact study of DSR's proposed Master Safety Savings Agreement[4] and other changes that DSR requested to the Special and General Provisions of the RFP. PRMT requested legal advice from the Office of Counsel (COUN) in regards to changes DSR requested to the Special and General Provisions of the RFP. COUN advised PRMT on March 13, 2007, that there were changes they should not accept, and changes they may accept. COUN advised PRMT and SAFE to conduct an evaluation to determine if the potential benefits of accepting the changes outweighed the potential business risks to WMATA.

While PRMT did not sign the Master Safety Savings Agreement, they did accept changes requested by DSR to more than half of the 48 General and Specific Provisions of the RFP. The prior CO accepted these changes without conducting any formal evaluation of the business risks to WMATA, as suggested by COUN. For example, PRMT deleted the following General Provisions: (1) the Change clause, which removed WMATA's rights to initiate changes to the contract, (2) the Stop Work Order clause, which removed WMATA's rights to stop work on the contract, (3) the Default clause, which removed WMATA's rights to damages if DSR defaulted on the contract, and (4) the Audit clause, which removed WMATA's rights to audit contract costs in case of a dispute. PRMT also revised the Special Provisions' Indemnification clause, which removed DSR's liability for alleged deficiencies in the quality of their work or advice.

[4] The Master Safety Savings Agreement defined the terms of DSR's proposed safety agreement. If accepted, the MSSA would modify or circumvent many of the terms in the RFP.

The prior CO stated that an informal evaluation was conducted of the business impact of DSR's requested changes to the RFP. According to the prior CO, the general consensus in PRMT was the changes would not impact the objective of the contract. However, there is no documentation of the informal evaluation.

A gain-sharing contract is fundamentally flawed if the sharing of benefits and risks is not properly structured, using an objective methodology that can be measured, supported by credible evidence, is verifiable, and clearly linked to the services provided. The gain-sharing approach used in this contract may not have been the best procurement vehicle for acquiring safety advisory services.

Failure to adequately assess the benefits and risks of the gain-sharing approach prior to contract award can adversely affect WMATA's ability to maximize benefits and minimize risks.

Recommendations

We recommend the GM/CEO:

2.1 Direct the DGMA/CFO to determine the financial impact of DSR's application of inflation factors twice for workers' compensation claim and third party liability incidents, and recoup any inappropriate application of the inflation factors by adjusting remaining payments and/or billing the contractor for any overpayments.

2.2 Direct the members of Executive Leadership Team and their senior managers to ensure projects are properly managed and monitored to meet goals and objectives.

2.3 Direct the DGMA/CFO to ensure the benefits and risks of using gain-sharing in a contract is adequately assessed and documented prior to contract award.

OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of the audit were to determine whether: (1) the contractor performed in accordance with the terms of the contract, (2) payments to the contractor were proper, and (3) whether adequate oversight of the contract was provided. The scope of our review covers the period from February 2007 through November 2011. To accomplish our audit objectives, we reviewed the Request for Proposals (RFP No. CQ7068/RC) for Safety Management Assessment and Enhancement Program, dated February 7, 2007, revised on March 20, 2007, and again on April 6, 2007; Volume I: Technical Proposal, dated March 26, 2007; DuPont Safety Resources Refined Compensation Model, dated April 5, 2007; Volume II: Financial Proposal, March 29, 2007 and revised June 2, 2008; and Contract Modification (M001), dated March 25, 2011.

We interviewed key WMATA personnel regarding their responsibilities for the contract process and contract oversight. We also interviewed WMATA executives and managers regarding safety committees and the implementation of Process Improvement Teams for incident and injury investigation, safety conversations, rules and procedures, return to work, performance management, and activities & involvement. We interviewed the CSO; Chief, Metro Transit Police Department; Chief Performance Officer; Deputy General Manager for Operations; AGM, Bus Services (BUS); Department of System Safety and Environmental Management's representatives and the current Contracting Officer Technical Representative; Office of Procurement and Materials' representatives and the former contracting officer; representatives from the Office of Risk Management; general superintendents, directors, assistant superintendents, and managers from Bus Transportation, Bus Maintenance, Track and Structures Maintenance, System Maintenance, Plant Maintenance, Elevator and Escalator Maintenance, Rail Car Maintenance, Office of Rail Transportation;

representatives from Return to Work; former contract Program Manager and former Contracting Officer Technical Representative from the former Department of System Safety and Risk Management; representatives from DuPont Safety Resources, and a representative from Aon Global Risk Consulting.

We conducted a review of the baseline data used by DSR to compute their baseline rates and costs. We assessed the adequacy and reliability of DSR's baseline rates and costs, recounted the workers' compensation claims and third party liability incidents used by DSR to prepare their invoices, and we reviewed DSR's invoices. We reviewed minutes from safety committees; observed training for the Return to Work Program; reviewed weekly status reports from the contractor; and reviewed WMATA's procurement policies and procedures.

The audit was conducted during the period of February 2011 through December 2012. We held an exit conference on December 5, 2011, to discuss the findings and recommendation derived from the audit with management personnel from SAFE, PRMT, CFO, RISK, COUN, and BUS.

We conducted our audit in accordance with *Government Auditing Standards,* appropriate to our scope. Those standards require that we plan and perform the audit to afford a reasonable basis for our judgments and conclusions regarding the organization, program, activity or function under audit. An audit includes assessment of applicable internal controls and compliance requirement of laws and regulations when necessary to satisfy our audit objectives. We believe our audit provides a reasonable basis for our judgments and conclusions regarding the organization, program activity or function under audit.

ADMINISTRATIVE MATTERS

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

We appreciate the cooperation and assistance extended by WMATA personnel during the audit. Should you or your staff have any questions, please contact Andrew Clemmons, Assistant Inspector General for Audits on (202) 962-1014, or me on (202) 962-2515.

Attachment

cc: DGMA/CFO - C. Kissal
SAFE - J. Dougherty
PRMT - H. Obora
CHOS - S. Pant
COUN - C. O'Keeffe

Appendix I

DuPont Safety Resources' Performance Payment based on Safety Related Benefits Calculation

DSR's Revised Volume II-Financial Proposal, Section III-V, states that the payment amount should be based on performance as calculated according to the terms of the agreement, specifically,

1. **Workers' Compensation Payment =**
   (Performance Share) X (Claim Rate Improvement) X (Standard Workers' Compensation Claim Cost) X (Actual Hours Worked)/200,000 Hours

2. **Third Party Liability-Bus Payment =**
   (Performance Share) X (Bus Incident Rate Improvement) X (Standard Bus Incident Cost) X (Scheduled Bus Miles)/100,000 Miles

3. **Third Party Liability-Rail Payment =**
   (Performance Share) X (Rail Incident Rate Improvement) X (Standard Rail Incident Cost) X (Actual Rail Passenger Gate Entries)/100,000 Gate Entries

M E M O R A N D U M

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SUBJECT: Response to OIG Draft Audit Report: Internal Operations No. 12-001 - Review of Contract CQ 7068-Safety Management Assessment and Enhancement Program

DATE: February 10, 2012

FROM: GM/CEO – Richard Sarles

TO: OIG – Helen Lew

Washington Metropolitan Area Transit Authority

The subject draft report, Internal Operations No. 12-001, Review of Contract CQ 7068-Safety Management Assessment and Enhancement Program was issued on January 20, 2012

It should be noted that the contract was awarded and in effect during a time of management transition and organizational changes. Current management and staff recognize the issues outlined in the audit report and will continue to take steps to ensure procedures and controls are in place. Below are management's specific responses to the findings and recommendations:

Finding 1 – DSR Generally Met Deliverables in the Contract

Auditor's Recommendations: None

Finding 2 – Payments to the Contractor Were Not Properly Calculated and Clearly Linked to Performance

Auditor's Recommendations:

We recommend the General Manager and Chief Executive Officer (GM/CEO):

1.1 Direct the CSO to ensure that the correct number of workers' compensation claims and third party liability incidents is used to calculate quarterly payments to the contractor, including reconciling differences between DSR and RISK to determine the amount of any overpayments during the course of the contract, and make the appropriate adjustments to the remaining payments to the contractor.

Management Response:

1.1 Staff will work to verify data reports from DSR and RISK to ensure proper workers' compensation claims and third party liability incidents are used in calculating invoices. This will be completed by June 30, 2012.

Finding 3 – WMATA did not Provide Proper Contract Oversight

Auditor's Recommendations:

We recommend the GM/CEO:

2.1 Direct the DGMA/CFO to determine the financial impact of DSR's application of inflation factors twice for workers' compensation claim and third party liability incidents, and recoup any inappropriate application of the inflation factors by adjusting remaining payments and/or billing the contractor for any overpayments.

2.2 Direct the members of the Executive Leadership Team and their senior managers to ensure projects are properly managed and monitored to meet goals and objectives.

2.3 Direct the DGMA/CFO to ensure the benefits and risks of using gain-sharing in a contract is adequately assessed and documented prior to contract award.

Management Response:

2.1 The Office of RISK Management (RISK) accepts the OIG recommendation, and as such is reviewing DSR's application of inflation factors. RISK expects to complete its analysis by February 29, 2012. To the extent, it is determined that DSR inappropriately applied the inflation factors, the remaining payments to DSR will be adjusted for any overpayments.

2.2 The Executive Leadership Team concurs with the recommendation to ensure projects are properly managed and monitored by both ELT and their senior managers to meet goals and objectives.

2.3 The Office of Procurement and Materials (PRMT) under the direction of the Chief Procurement Officer (CPO) concurs with this recommendation. Please note that the DSR contract currently is the only contract WMATA has with a gain share incentive built into the payment terms.

The CPO will update the Procurement Procedure Manual ("PPM") and will instruct PRMT Contract Administrators on how to properly assess the advantages versus disadvantages of "gain sharing" contracts for WMATA.