



Audit of the Executive Office for United States
Attorneys' Contracts Awarded to Cherokee Nation
3S, LLC for Legal and Other Support Services



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EXECUTIVE SUMMARY

Audit of the Executive Office for United States Attorneys' Contracts Awarded to Cherokee Nation 3S, LLC for Legal and Other Support Services

Objective

The Department of Justice (DOJ) Office of the Inspector General (OIG) audited the Executive Office for United States Attorneys (EOUSA) labor hour contracts with Cherokee Nation Support, Services, and Solution, LLC (CN3S) worth \$4,755,332 for support personnel and one Missing and Murdered Indigenous People (MMIP) Coordinator. The objective of the audit was to assess EOUSA's administration of the contracts; and CN3S's performance and compliance with the terms, condition, laws, and regulations applicable to these contracts.

Results in Brief

Our review of the two contracts identified areas in contract administration and oversight that need improvement. Additionally, we found that CN3S did not pay contractor personnel the required minimum wage and health and welfare rates (H&W) established by the U.S. Department of Labor (DOL). As a result, we identified \$11,866 in unpaid wages owed to contract personnel. We also found that EOUSA did not incorporate Federal Acquisition Regulation (FAR) clause 52.203-17 into the contracts, which establishes guidance to ensure contract workers are informed of their whistleblower rights and protections. We also questioned \$4,160 in overtime charges that lacked pre-approval.

Several of the deficiencies identified in this audit reflect concerns highlighted in two OIG DOJ-wide management advisories concerning: (1) [contract administration](#) and (2) compliance with laws and regulations that protect the [whistleblower rights](#) of those who support federal contracts.

Recommendations

Our report contains 13 recommendations to assist EOUSA in improving its contract administration practices. We requested a response to our draft audit report from EOUSA and CN3S, which can be found in Appendices 3 and 4, respectively. Our analysis of those responses is included in Appendix 5.

Audit Results

In September 2018 and April 2020, EOUSA awarded contract numbers 15JA0518C00000526 and 15JA0520P00000124, respectively, to CN3S in the amount of \$4,755,332 for legal and other support personnel and one MMIP Coordinator. The 2018 contract period of performance was a 1-year base and two 1-year options, and the 2020 contract period of performance was a 1-year base and four 1-year options. As of June 2021, EOUSA had exercised both option years of the 2018 contract and one option year of the 2020 contract. EOUSA has paid CN3S \$2,666,381 for the two contracts, or 56 percent of the total contract value.

Performance Monitoring

For the 2018 contract, we found that EOUSA's Contracting Officers' Representative (COR) did not develop a contractor evaluation schedule, document the results of those evaluations, and provide the results to the contractor as required by the contract. We also found that EOUSA failed to create a scope of work plan for the MMIP Coordinator position on the 2020 contract as required by the contract. EOUSA's contracts also did not require CN3S to conduct performance monitoring, such as periodically evaluating contract staffing levels, and evaluate contractor performance.

The FAR requires agencies to prepare annual and final contractor performance evaluations and to enter the information in the Contractor Performance Assessment Reporting System (CPARS). As of December 2020, EOUSA had not submitted any performance evaluations into CPARS for the two CN3S contracts. Additionally, EOUSA does not have policies and procedures for completing and submitting contractor performance evaluations in CPARS.

Staffing Level Requirements

EOUSA contracted with CN3S to provide 18 support personnel to perform various administrative and litigation-related duties for EOUSA's Southern District of California, located in San Diego, California.

We found instances in which CN3S did not meet the staffing level requirements funded in the 2018 contract for the following positions: (1) Visitor Control Receptionist; (2) Paralegal Specialist; and (3) Paralegal/Legal Assistant I. For example, between October 2019 and September 2020 (12 months), CN3S filled 2 of the 4 Visitor Control Receptionist positions, leaving the positions vacant for 50 percent of the time. Additionally, between May 2019 and September 2020 (17 months), CN3S filled 1 of the 2 required Paralegal Specialist positions, leaving the position vacant 71 percent of the time. We found that EOUSA does not have a quality assurance surveillance plan or equivalent to ensure staffing levels are periodically reviewed and that EOUSA's requirements for contractors are accurately reflected in its contracts for support personnel.

Service Contract Requirements and Wage Determination

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 and the U.S. Department of Labor (DOL) Wage Determinations (WDs). The DOL revises WDs on occasion to reflect the current prevailing wage and fringe benefit rates.

We found that CN3S did not pay contractor personnel the required minimum wage and H&W rates established by the DOL. Specifically, we found \$11,866 in unpaid wages that should have been paid to six contractor personnel. Further, EOUSA does not have written policies and procedures to ensure that minimum wage and H&W rates are incorporated into its contracts when exercising option years. As a result, EOUSA did not incorporate the most current DOL WDs when exercising option years of the 2018 contract. Therefore, CN3S may owe contractor personnel back pay for incorrect minimum wage and H&W benefit rates paid.

Whistleblower Rights and Protections

We found that EOUSA did not incorporate FAR clause 52.203-17 *Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights* into its 2018 and 2020 contracts as required by federal policy. As a result, EOUSA did not follow-up with CN3S to ensure it had notified contract workers of their whistleblower rights, which could have adversely affected contract workers knowledge of their rights and responsibilities to disclose wrongdoing.

Contractor Billing and Payments

We found instances in which EOUSA did not comply with its own policies and procedures for the receipt and review of contractor invoices, to ensure contractor bills are accurate and documentation to support the charges has been provided. As a result, we found 78 of 259 timesheets (30 percent) we tested were not properly reviewed and signed by the on-site government supervisor, and 56 of the 78 were also not reviewed and signed by the COR.

Among the 11 invoices we examined, EOUSA approved and paid 5 invoices with 34 overtime hours totaling \$4,160 that were not pre-approved by EOUSA as required

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Introduction

The Executive Office for United States Attorneys (EOUSA) was created on April 6, 1953, by Attorney General Order No. 8-53 to provide for close liaison between the Department of Justice (DOJ) in Washington, D.C., and the 93 United States Attorneys located throughout the 50 states, the District of Columbia, Guam, the Marianas Islands, Puerto Rico, and the U.S. Virgin Islands. The President appoints a United States Attorney to each of the 94 federal districts (Guam and the Northern Mariana Islands are separate districts but share a United States Attorney). The United States Attorney is the chief federal law enforcement officer in their district and is also involved in civil litigation where the United States is a party. EOUSA provides executive and administrative support to the United States Attorneys to include legal education, administrative oversight, technical support, and the creation of uniform policies. In part to help fulfill its mission, EOUSA contracts with various entities to provide legal and other support personnel.

EOUSA awarded two contracts to Cherokee Nation 3S, LLC (CN3S). CN3S operates under Cherokee Nation Businesses, which is wholly owned by Cherokee Nation, the largest Native American tribe in the U.S. CN3S is located in Tulsa, Oklahoma and is a participant in the Small Business Administration's 8(a) Business Development Program.¹

In September 2018, EOUSA awarded a \$3,927,350 labor hour contract with fixed prices to CN3S for legal and other support personnel to perform various administrative and litigation-related duties for EOUSA's Southern District of California, located in San Diego, California (USACAS).² The USACAS is responsible for prosecuting one of the largest criminal and civil caseloads in the United States. Because of its location, the USACAS is a major corridor for both illegal immigration and illicit drug trafficking activities, with more than 46 million inspections a year occurring at the border crossing between the United States and Mexico. The USACAS relies on contractors to help support its day-to-day litigative and administrative operations.

As shown in Table 1, the 2018 contract has a 1-year base period with two 1-year options, all of which have been exercised. EOUSA awarded this contract action as a sole-source small business follow-on contract to CN3S.³ The contract is for 18 support positions that include: Financial Specialists, Paralegal and Legal Assistants, Personnel Management Specialists, Receptionists, and Docketing Clerks.

¹ Section 7(j) of the Small Business Act (15 U.S.C. § 636(j)) authorizes the SBA to establish a business development program, known as the 8(a) Business Development Program. Additionally, SBA is authorized to enter into contracts with other federal agencies and to subcontract the performance of these contracts to qualified SBA 8(a) participants.

² The original contract award amount was \$3.79 million. In June 2019 and August 2019, EOUSA issued contract modifications that increased the total contract award amount to \$3.9 million.

³ Under 13 C.F.R. § 124.506, a procurement offered and accepted for the 8(a) Business Development program must be competed if the anticipated award price of the contract, including options will, exceed \$7,000,000 for manufacturing contracts and \$4,000,000 for all other contracts. Since EOUSA's contract did not exceed \$4,000,000, the contract was not required to be competed.

The contract was previously held by RAM Technologies (RAM). In September 2015, EOUSA awarded RAM a \$3.8 million contract with a 1-year base period with 2 option years, all of which have been exercised.

Table 1

**EOUSA's Contracts with Cherokee Nation 3S
(2018 to 2020)**

Contract Awarded	Contract Number	Performance Period	Contract Value	Contract Paid as of June 2021
2018 Contract	15JA0518C00000526	9/30/2018 – 9/29/2021	\$3,927,350	\$2,586,088
2020 Contract	15JA0520P00000124	4/28/2020 – 4/27/2025	827,982	80,293
Total			\$4,755,332	\$2,666,381

Source: EOUSA

In November 2019, the President signed Executive Order 13898, creating the Task Force on Missing and Murdered American Indians and Alaska Natives known as Operation Lady Justice. The Task Force's objective is to provide consultation services and develop protocols that are applied to new and unsolved cases of missing or murdered persons in American Indian and Alaska Native communities. The protocols include best practices for law enforcement response, data sharing, and the establishment of multi-disciplinary and multi-jurisdictional teams to review cold cases that involve missing and murdered indigenous people. The Task Force is also tasked with developing a campaign for outreach and public awareness. The DOJ has invested \$1.5 million in hiring 11 Missing and Murdered Indigenous Persons (MMIP) Coordinators to assist the U.S. Attorneys' Offices in Alaska, Arizona, Michigan, Minnesota, Montana, Nevada, New Mexico, Oklahoma, Oregon, Utah, and Washington state.

In April 2020, EOUSA awarded a second \$827,982 labor hour contract with fixed prices to CN3S for a MMIP Coordinator to develop national and district-wide guidelines to help respond to murdered and missing indigenous people cases for the United States Attorney's Office in the Western District of Washington state. There are 29 federally recognized Native American tribes in the State of Washington. The MMIP Coordinator coordinates with the tribal governments, federal, state, local and tribal law enforcement agencies, and other government and non-government agencies. As shown in Table 1, the 2020 contract has a 1-year base period with four 1-year options, one of which has been exercised. EOUSA awarded this contract action as a sole-source small business contract to CN3S. As of June 2021, EOUSA has paid CN3S \$2,666,381 for the two contracts, or 56 percent of the two contracts' total value of \$4,755,332.

Office of the Inspector General Audit Approach

Our objectives were to assess EOUSA's administration of the two contracts awarded to CN3S, and CN3S's performance and compliance with the terms, condition, laws, and regulations applicable to these contracts in the areas of: (1) contractor performance; (2) billings and payments; and (3) contract management, oversight, and monitoring.

To accomplish these objectives, we tested compliance with what we consider to be the most important conditions of the contract award. Unless otherwise stated in our report, the criteria we used to evaluate compliance are contained in the Federal Acquisition Regulation (FAR), EOUSA policies and procedures, and CN3S's policies and procedures. We interviewed key personnel at EOUSA including Contracting Officers, Contracting Officers' Representatives, Contract Specialists, government supervisors, human resource personnel, and fiscal personnel. Further, we conducted interviews with CN3S staff including the General Manager, Program Director, Program Manager, and contractor personnel. Lastly, we spoke to CN3S's subcontractor, Starks Industries, including the President and subcontractor personnel.

As noted in the Executive Summary, several of the issues identified in this audit reflect concerns highlighted in two OIG management advisory memoranda.⁴ These issues include Contract Oversight Responsibilities, Quality Assurance, and noncompliance with the Department's internal policies. Although this audit's conclusions and recommendations are related specifically to EOUSA's contracts, for the reasons set forth in the July 2020 and February 2021 Memoranda, the OIG believes that the issues the OIG has identified in multiple contract-related audits may be systemic in nature and require sustained attention across the organization.

⁴ DOJ OIG, [Management Advisory Memorandum Concerning the Department of Justice's Administration and Oversight of Contracts](https://www.oig.justice.gov/reports/management-advisory-memorandum-concerning-department-justices-administration-and-oversight), Audit Report 20-082 (July 2020), www.oig.justice.gov/reports/management-advisory-memorandum-concerning-department-justices-administration-and-oversight.

DOJ OIG, [Management Advisory: Notification of Concerns Regarding the Department of Justice's Compliance with Laws, Regulations, and Policies Regarding Whistleblower Rights and Protections for Contract Workers Supporting Department of Justice Programs](https://www.oig.justice.gov/reports/management-advisory-notification-concerns-regarding-department-justices-compliance-laws), Audit Report 21-038 (February 2021), www.oig.justice.gov/reports/management-advisory-notification-concerns-regarding-department-justices-compliance-laws.

Audit Results

Our audit identified several areas in need of improvement. Those areas include: (1) contract performance monitoring, (2) staffing level requirements; (3) wage determinations; and (4) whistleblower rights and protections. Specifically, we found that EOUSA did not conduct contract monitoring, evaluate contractor performance, and prepare and submit contractor performance evaluations in the Contractor Performance Assessment Reporting System (CPARS) as required by the FAR. Additionally, EOUSA did not require CN3S to conduct contract performance monitoring and evaluate contractor personnel performance. We found that EOUSA does not have a quality assurance surveillance plan (QASP) or equivalent to ensure staffing levels are periodically reviewed, and as a result, we found instances in which CN3S did not meet the staffing level requirements funded in the 2018 contract. We also found that CN3S did not pay contractor personnel the required minimum wage and health and welfare rates (H&W) established by the U.S. Department of Labor (DOL). As a result, we identified \$11,866 in unpaid wages owed to contract personnel for incorrect wages and health and welfare benefits paid. We also found that EOUSA did not incorporate FAR clause 52.203-17 into the contracts, which establishes guidance to ensure contract workers are informed of their whistleblower rights and protections. We questioned \$4,160 in overtime charges that were not pre-approved.

Performance Monitoring

According to the terms of the 2018 contract, the Contracting Officer's Representative (COR) is responsible for developing a contractor evaluation schedule, documenting the results of those evaluations, and providing the results to the contractor on a bi-annual basis or more frequently as required. The frequency of evaluations is determined by the COR and should occur more often during the initial months after contract award and whenever problem areas are identified. Additionally, the 2018 contract describes the requirement for a quality assurance surveillance plan (QASP) to determine trends or patterns concerning specific individuals, shifts, or technical deficiencies. To evaluate contractor performance, the COR may collect customer feedback or complaints and conduct on-site reviews.

We determined that although the COR worked in the same building as contractor personnel and occasionally spoke to them about their work, no formal evaluations or on-site reviews were conducted. Rather, the COR stated that government supervisors would provide feedback on contractor personnel performance and CN3S's liaison would bring up any issues that the COR should be made aware of. The COR stated that these discussions were informal conversations and were not documented. We asked the COR why formal evaluations were not scheduled and conducted, but the COR was not aware that a formal review process was required by the contract. We asked EOUSA how it ensured that all contractor personnel were being evaluated and how performance issues were being addressed without a record of performance. An EOUSA official stated that actions have been taken to address poor performers in the past. However, we believe without a formal process for evaluating and documenting contractor performance, EOUSA is not complying with the terms and conditions of the contract and potential issues with contractor personnel may go unnoticed and unaddressed. Therefore, we recommend that EOUSA ensure its COR develops a contractor evaluation schedule, documents the results of those evaluations, and provides the results to CN3S as required by the contract.

The 2020 contract states that the COR will be responsible for providing direction to the contractor which includes clarifying the contract effort and evaluating performance. The 2020 contract did not include

specific performance reporting requirements or instructions as to how and when contract performance should be evaluated. At the time of our audit fieldwork, the United States Attorney's Office for the Western District of Washington (USAWAW) did not have a COR assigned to the 2020 contract. Rather, a COR from the Eastern District of Washington was assigned to perform COR duties until the position could be filled by a USAWAW COR. At the start of our audit, the MMIP Coordinator had only held the position for 2 months, and therefore, no performance evaluations or reviews had been conducted. According to the terms of the 2020 contract, CN3S was required to work with USAO managers and attorneys to establish the scope of work plan for the MMIP Coordinator. However, the COR from the Eastern District of Washington stated that a performance work plan had not yet been developed for the MMIP Coordinator, but that the COR and Contracting Officer planned to develop one. It is difficult for the COR to evaluate contractor performance without a work plan and established performance reporting requirements. Therefore, we recommend that EOUSA ensure that a work plan for the MMIP Coordinator is developed and implemented, and that contractor performance is evaluated as required by the contract.

Based on our review of the 2018 and 2020 contracts, we determined that the contracts did not require CN3S to conduct performance monitoring (such as periodically evaluating contract staffing levels) and evaluate contractor performance. Rather, the 2018 contract states that the contractor shall appoint a supervisor/manager who will be the contractor's authorized representative for technical and administrative performance of all services required. The supervisor shall provide the single point of contact through which all contractor and government communications, work, and technical direction shall flow. Although CN3S provided an on-site liaison who handled all contractor and government communications and ensured contractors' timesheets were submitted timely, we determined that the liaison was not involved with evaluating staffing levels or contractor performance. We asked CN3S how it ensures adequate performance is occurring on its contracts with EOUSA. In support of the 2018 contract, a CN3S manager stated that it has conducted on-site visits to the USACAS and had informal conversations with contractor personnel, CN3S's liaison, and the COR to ensure adequate contract performance is occurring. However, we determined that these discussions are not documented and CN3S does not have a record of its contractor personnel performance evaluations. CN3S's manager stated that it plans to conduct performance evaluations at the end of the contract. We also determined that CN3S was not evaluating its subcontractor's performance, and in turn, its subcontractor was not conducting any performance evaluations of its contractor personnel. Without a contractual obligation for CN3S to conduct performance monitoring and evaluate contractor and subcontractors' performance, it is difficult for CN3S to ensure that it is meeting the terms and conditions of the contract. Therefore, we recommend that EOUSA review its contracts with CN3S and ensure that adequate contractor performance monitoring and quality assurance requirements are included in future similar contract vehicles.

Contractor Performance Assessment Reporting System

The FAR requires agencies to prepare annual and final contractor performance evaluations and to enter the information in CPARS for contracts that exceed the Simplified Acquisition Threshold.⁵ This government-wide reporting tool is used to document contractor past performance, including the contractor's record of conforming to requirements, controlling costs, and adhering to contract schedules.

⁵ FAR Subpart 42.15, Contractor Performance Information.

As of December 2020, EOUSA had not entered any performance evaluations into CPARS for the two CN3S contracts. We asked an EOUSA official why contractor performance information was not entered into CPARS as required. The Assistant Director of Acquisitions stated that EOUSA has been short staffed the last several years, with multiple open vacancies in the unit, and that 3 COs support 93 district offices. According to the Assistant Director of Acquisitions, CPARS is a task that may get missed with the amount of work each CO is handling. In May 2021, the CO for the 2020 contract entered performance evaluation information into CPARS; however, the CO for the 2018 contract still had not entered information into CPARS.

We also determined that EOUSA does not have policies and procedures for completing and entering contractor performance evaluations into CPARS. As previously discussed, EOUSA did not have formal procedures for evaluating contractor performance, and therefore, contractor evaluations were not conducted. When performance evaluations are not entered into CPARS, government agencies, who rely on this information when making subsequent award decisions, may engage an underperforming contractor, potentially causing unnecessary delays and waste of taxpayer dollars. Therefore, we recommend that EOUSA ensure that contractor performance evaluations are completed and entered into CPARS in a timely manner, as required by the FAR.

Contract Staffing Requirements

The 2018 contract states that the USACAS has a long-term requirement for 18 personnel positions. The 18 positions include: 7 Paralegal/Legal Assistants I; 4 Visitor Control Receptionists; 2 Paralegal Specialists; 2 Docketing Clerks; 1 Financial Specialist; 1 Personnel Specialist; and 1 Liaison/Paralegal/Legal Assistant I.⁶ At least 50 percent of the cost of contract performance incurred for personnel was required to be expended for employees of CN3S.

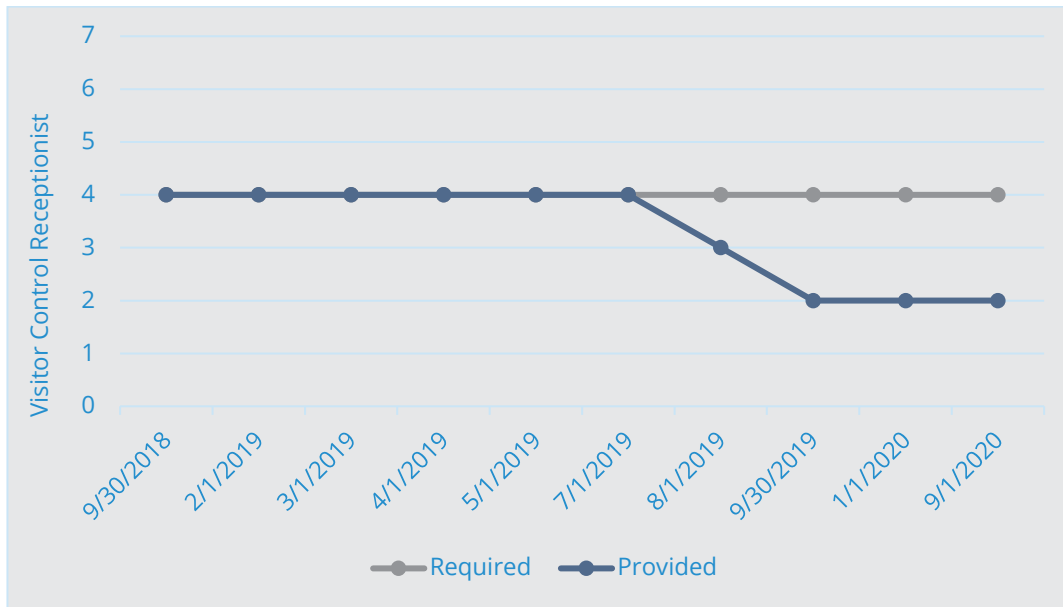
Based on our evaluation of the 2018 contract, at least 50 percent of the personnel contract costs were expended for CN3S personnel. Specifically, we found 57 percent of the personnel costs were incurred by CN3S employees, while 43 percent of the personnel costs were incurred by CN3S's subcontractor. However, we found instances in which CN3S did not meet the staffing level requirements funded in the contract for the following positions: (1) Visitor Control Receptionist; (2) Paralegal Specialist; and (3) Paralegal/Legal Assistant I.

Between October 2019 and September 2020 (12 months), CN3S filled two of the four Visitor Control Receptionist positions. As shown in Chart 1, the Visitor Control Receptionist positions were vacant for 50 percent of the time. The COR for the 2018 contract stated that CN3S had started seeking a replacement candidate before one Visitor Control Receptionist departed in August 2019. However, the Deputy Administrative Officer directed the COR not to seek replacements for the two open positions. The COR stated that it was more cost effective to have only two of the four positions filled and pay overtime to meet any additional requirements.

⁶ Of the 18 contract positions, EOUSA funded 13 of the positions including: 4 Paralegal/Legal Assistants I; 4 Visitor Control Receptionists; 2 Paralegal Specialists; 1 Financial Specialist; 1 Personnel Specialist; and 1 Liaison/Paralegal/Legal Assistant I. The remaining five positions were never funded and left vacant.

Figure 1

Visitor Control Receptionist Staffing Levels
(2018 to 2020)



Note: Months presented are not to scale, but rather reflect points in time.

Source: OIG

Further, between May 2019 and September 2020 (17 months), CN3S filled one of the two required Paralegal Specialist positions. The Paralegal Specialist position was vacant for 71 percent of the time. An EOUSA official stated that the office did not have a need to fill the remaining position; and therefore, did not ask CN3S to fill the open Paralegal Specialist position. We asked EOUSA why the contract was not modified to more accurately reflect the number of positions required. An EOUSA official stated that it did not want to add multiple modifications to the contract as staffing levels continued to change.

Between February 2019 and May 2019 (4 months), CN3S filled three of the four required Paralegal/Legal Assistant I positions funded on the 2018 contract. In July 2019, the vacant position was filled and EOUSA issued a contract modification to fund another Paralegal/Legal Assistant I, increasing the requirement to five positions. However, we found that CN3S never fulfilled the new requirement. The Assistant Director of Acquisitions stated that a candidate had started the process but ultimately was not hired. As shown in Chart 2, in January 2020, CN3S lost another Paralegal/Legal Assistant I. As of May 2021, the two positions remained vacant. The Assistant Director of Acquisitions stated that after the onset of the COVID-19 pandemic, EOUSA decided not to fill the vacant positions.

Figure 2

Paralegal/Legal Assistant I Staffing Levels
(2018 to 2020)



Note: Months presented are not to scale, but rather reflect points in time.

Source: OIG

The Assistant Director of Acquisitions also stated that the COVID-19 pandemic has affected how the office will move forward with filling vacant contract positions because it is unknown how long it would last and the overall impact on the workload of the office. The Assistant Director stated that the office is now in a much better position to forecast its requirements for the upcoming fiscal year. Additionally, a United States Attorney has been conducting a staffing analysis in an effort to hire new Assistant United States Attorneys, and based on that potential hiring, the required number of contractors could change. However, when we requested the staffing analysis, the Assistant Director of Acquisitions stated that the staffing analysis was not a document, but rather a discussion amongst internal senior management.

FAR Subpart 46.4 states that a quality assurance surveillance plan (QASP) should be prepared with the statement of work (SOW) and specify all activity requiring surveillance (such as monitoring and evaluation) and the method of surveillance. A well-designed QASP specifies the timing, location, and extent of surveillance (monitoring). As previously discussed, the 2018 contract describes the requirement for a QASP to determine trends or patterns concerning specific individuals, shifts, or technical deficiencies. EOUSA's QASP stated that customer feedback and complaints would be collected and on-site reviews could be conducted. However, EOUSA's QASP did not include a monitoring process to ensure contractor staffing requirements were being met. Therefore, we recommend that EOUSA develop and implement a meaningful QASP or equivalent that would serve as a framework for post-award administration and oversight.

Service Contract Requirements and Wage Determination

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 (SCA), 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.

Compliance with Minimum Wage Requirements

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. We judgmentally selected 37 paystubs from 8 contractor personnel (4 CN3S contractors and 4 subcontractors) for a total of \$86,391, to determine whether CN3S complied with SCLS and the DOL WD and whether EOUSA approved accurate price adjustments for the contract in accordance with FAR requirements.

As shown in Table 2, we found that both CN3S and its subcontractor paid two Paralegal Specialists at a rate less than the minimum wage established in the DOL WD. According to the WD effective at the start of the 2018 contract, the minimum wage for a Paralegal Specialist was \$26.91 an hour. However, CN3S paid its Paralegal Specialist an hourly rate of \$24.29, and its subcontractor paid its Paralegal Specialist an hourly rate of \$23.87. In total, we found that \$11,633 should have been paid to the two Paralegal Specialists for 4,782 hours billed between October 2018 and September 2020. We also determined that EOUSA did not incorporate the most current DOL WD when exercising option years of the 2018 contract. An EOUSA official stated that this was an administrative error. However, we determined that EOUSA does not have written policies and procedures to ensure required minimum wage rates are incorporated into contracts when exercising option years. We discuss this issue in more detail in the Compliance with Health and Welfare Benefit Requirements section below.

Table 2

**Paralegal Specialists Paid Less than the DOL’s Required Minimum Wage
(2018 to 2020)**

2018 Contract Year	WD Number 2015-5635 ^a	WD Hourly Wage Rate	CN3S Rate Paid ^b	Difference
Base	Revision 9	\$26.91	\$24.29	(\$2.62)
Option Year 1	Revision 11	26.91	25.02	(1.89)
Option Year 2	Revision 13	26.91	25.77	(1.14)
2018 Contract Year	WD Number 2015-5635	WD Hourly Wage Rate	Subcontractor Rate Paid	Difference
Base	Revision 9	\$26.91	\$23.87	(\$3.04)
Option Year 1	Revision 11	26.91	N/A	
Option Year 2	Revision 13	26.91	N/A	

^a Odd numbered DOL WDs are applicable to the 2018 contract. Even numbered DOL WDs are only applicable when an even numbered SCA WD was applied to the preceding contract.

^b The 2018 contract began on September 30, 2018. CN3S paid an hourly rate of \$24.29 in the base year and into option year 1, until October 13, 2019, when it increased the hourly rate to \$25.02. On September 27, 2020, CN3S raised the hourly rate to \$25.77, and continued to pay this rate into option year 2.

Source: OIG

We asked CN3S why its Paralegal Specialists were not paid the minimum wage established by the DOL’s WD. The CN3S official acknowledged that the Paralegal Specialist was hired at the incorrect rate and this was likely an oversight by the CN3S Program Manager. When hiring contractor personnel, CN3S recruiting personnel are responsible for reviewing pay rates and comparing those rates to DOL WDs. The CN3S Program Manager then reviews and approves the wage rates. We found that CN3S does not have written policies and procedures in place to ensure contractor personnel are paid the correct rates established by the DOL. A CN3S official stated that it is currently working to resolve this issue and compensate its employees for any incorrectly calculated wages. We also asked CN3S’s subcontractor why its Paralegal Specialist was not paid the correct minimum wage. The subcontractor did not know why the Paralegal Specialist was hired at the incorrect rate and agreed that there was a discrepancy. Therefore, we recommend that EOUSA work with the Department of Labor, and as necessary CN3S, to include referrals to ensure CN3S develops and implements written procedures to ensure that contractor personnel, whether employed by CN3S or a subcontractor, are paid at least the minimum wage established by DOL WD. We also recommend that EOUSA work with the Department of Labor, and as necessary CN3S, to include referrals to ensure CN3S identifies and remedies any amounts due to contractor personnel for incorrect wage rates, whether employed by CN3S or its subcontractor.

Compliance with Health and Welfare Benefit Requirements

In addition to paying the minimum wage established by the DOL, contractors and subcontractors are also required to pay fringe benefits to contractor personnel as required under the SCLS. The DOL WDs contain provisions for vacation and holiday benefits, and a prescribed minimum rate for all other benefits, known as the health & welfare (H&W) rate.⁷ According to the SCLS, the obligation to provide fringe benefits may be discharged by making equivalent or differential payments in cash to contractor personnel.

We found that CN3S did not pay the minimum H&W rate for two of its contractor personnel for the pay period ending October 13, 2018. According to CN3S's Program Director, when a services contract employee is hired and has not yet completed their benefits enrollment, the employer costs associated with the H&W rate are withheld. If the employee elects to waive their benefits, then the amount withheld is retroactively paid back to the employee. However, we found that CN3S did not reimburse two contractor personnel for H&W-related costs that were withheld from the employees first two paychecks. As a result, we determined that \$658 should have been paid to the two employees for the amounts withheld. In June 2021, CN3S provided evidence that it back paid \$658 to the two employees.

Wage Determination Revisions Not Incorporated into the Contract

At the start of the 2018 contract, the September 2018 H&W rate was \$4.18. In August 2019, a DOL WD revision increased the rate to \$4.22.⁸ However, we found that CN3S did not increase its H&W rate to \$4.22 when EOUSA exercised option years 1 and 2. According to CN3S's Program Director, the DOL WD revision was never incorporated by EOUSA into the contract. According to the FAR, EOUSA is required to incorporate DOL WD revisions prior to exercising option years.⁹ We asked EOUSA's Assistant Director of Acquisitions whether a modification was issued to incorporate the revised DOL WD. The Assistant Director of Acquisitions stated that the DOL WDs were not incorporated when the options were exercised because of an administrative error. We also determined that EOUSA does not have written policies and procedures for incorporating DOL WD revisions. In total, we found that \$233 should have been paid to four contractor personnel. Therefore, we recommend that EOUSA develop and implement policies and procedures to ensure DOL WDs are incorporated into its contracts when exercising option years. We also recommend that EOUSA work with the Department of Labor, and as necessary CN3S, to include referrals to ensure CN3S identifies and remedies any amounts owed to contractor personnel for incorrect H&W rates associated with the 2018 contract.

Contract Worker Whistleblower Rights and Protections

On August 9, 2016, the Justice Management Division (JMD) issued Procurement Guidance Document (PGD) 16-05, Implementation of Requirement of Notification to Contractors of Employee Whistleblower

⁷ According to 29 C.F.R. § 4.172, every employee performing on a covered contract must be furnished fringe benefits required by the applicable wage determination for all hours spent working on the contract up to a maximum of 40 hours per week and 2,080 hours per year.

⁸ The DOL WD revision's footnote indicates that the H&W rate (Executive Order 13706) should be used when compensating employees for performance on an SCA-covered contract.

⁹ FAR Subpart 52.222-43.

Rights, to implement the requirements of 41 U.S.C. § 4712 and FAR Subpart 3.908-9 effective immediately.¹⁰ PGD 16-05 required COs to insert FAR clause 52.203-17 *Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights* into all new contracts. Additionally, for all new and existing contracts, the guidance required COs to: (1) provide contractors with the “Whistleblower Information for DOJ Contractors, Subcontractors, and Grantees” document (Whistleblower Information document); (2) direct the contractors and subcontractors to distribute the Whistleblower Information document to their employees; and (3) direct the contractor to provide an affirmative response notifying the DOJ of their successful distribution of the Whistleblower Information document to its employees, which should be added to the contract file. For existing contracts, COs should perform all previously mentioned procedures and incorporate FAR clause 52.203-17 in all contracts over the Simplified Acquisition Threshold (SAT).¹¹

We found that EOUSA did not incorporate FAR clause 52.203-17 into the 2018 and 2020 contracts as required. Additionally, CN3S did not incorporate the FAR clause into its contract with the subcontractor. When we asked an EOUSA official why the clause was not incorporated into the contracts, the EOUSA official stated that it was an oversight. On June 14, 2021, JMD issued guidance, which included Acquisition Policy Notice (APN) 2021-03A. APN 2021-03A replaces the previous APN dated March 19, 2021, and includes effective dates for the requirement for inclusion of the clause. APN 2021-03A states that “all relevant DOJ contracts awarded after issuance of PGD 16-05 (August 9, 2016), but prior to issuance of APN 2021-03 (March 19, 2021), are subject to the requirements detailed in PGD 16-05.” The guidance from JMD further states that the impact of APN 2021-03A requires agencies to modify any active contract actions that exceed the SAT. An EOUSA official stated that it is working to modify all their active contracts from 2016 forward to incorporate this policy. EOUSA CO’s have been instructed to review their assigned contract awards when a new modification request is received, to determine if the clause is applicable and should be incorporated into the contract. EOUSA plans to modify the 2018 and 2020 contracts, incorporating FAR clause 52.203-17 by mid-August 2021. Therefore, we recommend that EOUSA modify the 2018 and 2020 contracts to include FAR clause 52.203-17 as required by federal policy.

¹⁰ Federal law (41 U.S.C. § 4712) prohibits a federal contractor from discharging, demoting, or otherwise discriminating against a contract work as a reprisal for disclosing information that the worker reasonably believes is evidence of gross waste, gross mismanagement, abuse of authority, or a violation of law, rule, or regulation related to a contract. The statute also requires the head of each executive agency to ensure that its contractor inform their workers in writing of the rights and remedies under the statute. FAR Subpart 3.903, Whistleblower Protections for Contractor Employees, Policy, prohibits government contractors from retaliating against a contract worker for making a protected disclosure. The regulation also requires COs to insert FAR clause 52.203-17, Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights in all solicitations and contracts that exceed the SAT. The contractor is also required to insert FAR clause 52.203-17 in all subcontracts over the SAT.

FAR Subpart 2.101, Definitions, states that SATs are not to exceed \$250,000 for acquisitions of supplies and services.

¹¹ The OIG recently highlighted systemic non-compliance with laws, regulations, and established internal policies designed to ensure notice to contract workers about their whistleblower rights and protections in the DOJ OIG, [Management Advisory: Notification of Concerns Regarding the Department of Justice’s Compliance with Laws, Regulations, and Policies Regarding Whistleblower Rights and Protections for Contract Workers Supporting Department of Justice Programs](#), Audit Report 21-038 (February 2021), www.oig.justice.gov/reports/management-advisory-notification-concerns-regarding-department-justices-compliance-laws.

JMD recently established a new Department-wide “Whistleblower information Distribution (OCT 2021)” contract clause that it will incorporate into the APN and become effective on October 1, 2021. The clause will require all contractors and their subcontractors to distribute the OIG’s Whistleblower Information Document (within 30 days of contract award) to their employees that support relevant DOJ contract actions. The clause also states that by agreeing to the contract terms and conditions, the prime contractor acknowledges receipt of the requirement in accordance with 41 U.S.C. § 4712, FAR Subparts 3.908 and clause 52.203-17 and commits to distribution.

EOUSA also did not provide CN3S with the Whistleblower Information document and did not direct CN3S to distribute the Whistleblower Information document to contract workers as required by PGD 16-05. When we asked an EOUSA official why the Whistleblower Information document was not provided, an EOUSA official stated that there was widespread confusion as to how the documentation was to be disseminated to the contractor community when the initial guidance was released. We asked five contractor personnel whether they have been informed of the rights and protections extended to them as workers contributing to a federal contract. We also asked the five contractor personnel if they were required to sign a non-disclosure agreement, restricting them from reporting waste, fraud, or abuse on a government contract. Of the five contractor personnel we spoke to, two stated that they were informed about their whistleblower rights and protections, while the remaining three stated that they were either unsure or could not recall. We determined that each of the five contractor personnel were required to sign a non-disclosure agreement. However, when we reviewed the signed non-disclosure agreements we found that the agreements did not restrict contractor personnel from reporting waste, fraud, or abuse, and in fact, encouraged such reporting.

As of July 2021, EOUSA has not directed CN3S to provide an affirmative response notifying the DOJ of their successful distribution of the Whistleblower Information document to contract workers, which could have adversely affected contract workers knowledge of their rights and responsibilities to disclose wrongdoing. Without such assurances, EOUSA cannot be certain that contract personnel are aware of the whistleblower rights and protections afforded to them by federal policy. Therefore, we recommend that EOUSA ensure the COs assigned to the two contracts comply with the requirements in PGD 16-05, including: (1) provide contractors with the “Whistleblower Information for DOJ Contractors, Subcontractors, and Grantees” document (Whistleblower Information document); (2) direct the contractors and subcontractors to distribute the Whistleblower Information document to their employees; and (3) direct the contractor to provide an affirmative response notifying the DOJ of their successful distribution of the Whistleblower Information document to its employees, which should be added to the contract file.

Contractor Billing and Payments

According to the COR for the 2018 contract, on-site government supervisors confirm hours worked by contractor personnel by reviewing and signing timesheets. CN3S’s liaison, who also charges time to the contract, is responsible for electronically sending the timesheets on a bi-weekly basis to the COR for review. Once the COR has reviewed and electronically signed the timesheets, as the final approver, the timesheets are returned to CN3S for invoicing. When the COR receives the monthly invoice from CN3S, the COR is responsible for ensuring that the contract line-item numbers (CLINs) have the correct hourly rates and the extended amounts are correct. According to the terms of the 2018 contract, the COR certifies the invoice and forwards it to the Finance Office for payment.

According to the MMIP Coordinator for the 2020 contract, the CN3S Program Manager reviews and electronically signs the timesheet on a bi-weekly basis. The COR is responsible for certifying all invoices indicating receipt and acceptance of services provided for payment. However, we found that the COR assigned to this contract, from the Eastern District of Washington, does not review invoices and is not physically located at the district office where the MMIP Coordinator is assigned. Therefore, upon receipt of the invoice, the on-site government supervisor reviews and signs the invoice to certify the receipt and acceptance of services.

To determine whether CN3S accurately billed EOUSA for the services provided, we selected 11 of 25 (44 percent) invoices received between October 2018 and November 2020. The 11 invoices contained 259 timesheets, totaling \$821,478. Of the 11 invoices, 10 are from the 2018 contract, totaling \$818,957, and 1 is from the 2020 contract, totaling \$2,521. We reviewed the invoices and determined that the invoices were unsupported, not properly authorized, and non-compliant with the terms and conditions of the 2018 contract.

Unsupported Payments

We found 5 invoices with 34 charges, totaling \$4,160, for contractor overtime worked without prior authorization. Based on the 2018 contract's SOW, "overtime will be granted upon prior approval of the Administrative Officer." When we asked EOUSA why contractor overtime was paid without prior authorization, the COR provided a memorandum dated September 30, 2019, authorizing 30 minutes of overtime to be worked each day for each Visitor Control Receptionist position. However, we determined that each of the 34 overtime charges were incurred before the memorandum became effective. The COR stated that prior to September 30, 2019, the approval to work overtime was left up to the supervisor or the COR. However, the COR was unable to provide documentation to support approval of the overtime hours billed and paid. Without documentation to support the approval of overtime worked, the costs charged to the 2018 contract are unsupported. Therefore, we recommend that EOUSA work with CN3S to remedy \$4,160 in unsupported contractor hours billed and paid.

Missing Timesheets and Lack of Proper Authorization

According to the terms of the 2018 contract, the COR certifies the invoice for payment and all invoices are required to include copies of employees' time records. Additionally, the COR stated that on-site government supervisors are required to confirm hours worked by contractor personnel by reviewing and signing timesheets.

We found 78 of the 259 timesheets (30 percent) we tested did not have proper authorization from the on-site government supervisor. Additionally, 56 of the 78 timesheets were also not reviewed and signed by the COR. We asked the COR why timesheets were not reviewed and signed by the on-site government supervisor and the COR. The COR acknowledged that the timesheets did not have the on-site government supervisor's signature on them and stated that designated backup personnel may also review and approve contractor timesheets if the on-site government supervisor is unavailable. However, we found 15 timesheets signed by government personnel that were not the authorized on-site government supervisor or the designated backup approver.

We also found that EOUSA was unable to provide 29 contractor timesheets, totaling \$41,660. We requested and received the 29 timesheets from CN3S, and therefore, we do not take issue with the contractor costs billed and paid by EOUSA. However, based on our review of the Resource Management and Planning Staff Policy, we determined that EOUSA was not in compliance with its own policies and procedures to ensure contractor bills are accurate and that supporting documentation for the services billed are provided with the invoices. Therefore, we recommend that EOUSA ensure EOUSA staff are complying with its own policies and procedures for receiving, reviewing, and processing contractor invoices, which includes ensuring that contractor invoices are adequately supported, and contractor timesheets are properly authorized.

Conclusion and Recommendations

Our audit identified several areas in need of improvement. First, we found that EOUSA did not conduct contract monitoring, evaluate contractor performance, and prepare and enter contractor performance evaluations into CPARS as required by the FAR. Additionally, EOUSA did not require CN3S to conduct contract performance monitoring and evaluate contractor personnel performance. We found EOUSA does not have a QASP or equivalent to ensure staffing levels are periodically reviewed; and as a result, we found instances where CN3S did not meet the staffing level requirements funded in the 2018 contract. Further, CN3S did not pay contractor personnel the required minimum wage and H&W established in the DOL WDs. As a result, we identified \$11,866 owed to contract personnel for incorrect wages and health and welfare benefits paid. We also found that EOUSA did not incorporate FAR clause 52.203-17 into the contracts, which ensures contract workers are informed of their whistleblower rights and protections. Lastly, we questioned \$4,160 in unapproved overtime charges.

We recommend that EOUSA:

1. Ensure its COR develops a contractor evaluation schedule, documents the results of those evaluations, and provides the results to CN3S as required by the contract.
2. Ensure that a work plan for the MMIP Coordinator is developed and implemented and that contractor performance is evaluated as required by the contract.
3. Review its contracts with CN3S and ensure that adequate contractor performance monitoring and quality assurance requirements are included on future similar contract vehicles.
4. Ensure that contractor performance evaluations are completed and entered into CPARS in a timely manner as required by the FAR.
5. Develop and implement a meaningful QASP or equivalent that would serve as a framework for post-award administration and oversight.
6. Work with the Department of Labor, and as necessary CN3S, to include referrals to ensure CN3S develops and implements written procedures to ensure that contractor personnel, whether employed by CN3S or a subcontractor, are paid at least the minimum wage established by DOL WD.
7. Work with the Department of Labor, and as necessary CN3S, to include referrals to ensure CN3S identifies and remedies any amounts owed to contractor personnel for incorrect wage rates, whether employed by CN3S or its subcontractor.
8. Develop and implement policies and procedures to ensure DOL WDs are incorporated into its contracts when exercising option years.

9. Work with the Department of Labor, and as necessary CN3S, to include referrals to ensure CN3S identifies and remedies any amounts owed to contractor personnel for incorrect H&W rates associated with the 2018 contract.
10. Modify the 2018 and 2020 contracts to include FAR clause 52.203-17 as required by federal policy.
11. Ensure the COs assigned to the two contracts comply with the requirements in PGD 16-05, including: (1) provide contractors with the "Whistleblower Information for DOJ Contractors, Subcontractors, and Grantees" document (Whistleblower Information document); (2) direct the contractors and subcontractors to distribute the Whistleblower Information document to their employees; and (3) direct the contractor to provide an affirmative response notifying the DOJ of their successful distribution of the Whistleblower Information document to its employees, which should be added to the contract file.
12. Work with CN3S to remedy \$4,160 in unsupported contractor hours billed and paid.
13. Ensure EOUSA staff are complying with its own policies and procedures for receiving, reviewing, and processing contractor invoices, which includes ensuring that contractor invoices are adequately supported, and contractor timesheets are properly authorized.

APPENDIX 1: Objectives, Scope, and Methodology

Objectives

The objectives of this audit were to assess EOUSA's administration of the contracts, and CN3S's performance and compliance with the terms, condition, laws, and regulations applicable to these contracts.

Scope and Methodology

The scope of our audit focused on two EOUSA contracts awarded to CN3S to provide support personnel to perform various administrative and litigative-related duties for the United States Attorney's Office for the Southern District of California located in San Diego, California, and to provide a Murdered and Missing Indigenous Persons Coordinator to review cold cases and develop national and district-wide guidelines to help respond to murdered and missing indigenous people cases at the United States Attorney's Office for the Western District of Washington state. The period of contract performance for contract numbers 15JA0518C00000526 and 15JA0520P00000124 is September 2018 to September 2021 and April 2020 to April 2025, respectively. Contract number 15JA0520P00000124 has a 1-year base period with 4 option years, one of which has been exercised. Contract number 15JA0518C00000526 has a 1-year base period with 2 option years, all of which have been exercised.

To accomplish our objectives, we reviewed the contract files, including the requisition, solicitation, and documentation for price reasonableness. We also reviewed relevant DOJ and EOUSA policies and procedures related to the acquisition processes.

Statement on Compliance with Generally Accepted Government Auditing Standards

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.

Internal Controls

In this audit, we performed testing of internal controls significant within the context of our audit objectives. We did not evaluate the internal controls of EOUSA to provide assurance on its internal control structure as a whole. EOUSA management is responsible for the establishment and maintenance of internal controls in accordance with the FAR. Because we do not express an opinion on EOUSA's internal control structure as a whole, we offer this statement solely for the information and use of EOUSA.¹²

We assessed the design, implementation, and operating effectiveness of these internal controls and identified deficiencies that we believe could affect EOUSA's ability to ensure compliance with laws and regulations. The internal control deficiencies we found are discussed in the Audit Results section of this

¹² This restriction is not intended to limit the distribution of this report, which is a matter of public record.

report. However, because our review was limited to those internal control components and underlying principles that we found significant to the objectives of this audit, it may not have disclosed all internal control deficiencies that may have existed at the time of this audit.

Compliance with Laws and Regulations

In this audit we also tested, as appropriate given our audit objectives and scope, selected transactions, records, procedures, and practices, to obtain reasonable assurance that EOUSA's and CN3S's management complied with federal laws and regulations for which noncompliance, in our judgment, could have a material effect on the results of our audit. Our audit included examining, on a test basis, EOUSA's and CN3S's compliance with the following laws and regulations that could have a material effect on EOUSA's and CN3S's operations:

- FAR Subpart 3.9, Whistleblower Protections for Contractor Employees;
- FAR Subpart 42.15, Contractor Performance Information;
- FAR Subpart 46.4, Government Contract Quality Assurance;
- FAR Subpart 52.203-17, Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights;
- FAR Subpart 52.232-7, Payments under Time-and-Materials and Labor-Hour Contract; and
- FAR Subpart 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards.

This testing included analyzing contract files and related documentation, interviewing EOUSA, CN3S, and subcontractor personnel, and reviewing invoices and supporting documentation. As noted in the Audit Results section of this report, we found that EOUSA and CN3S did not comply with federal regulations related to administration and oversight, invoicing, and whistleblower rights and protections.

Sample-Based Testing

To accomplish our audit objective, we performed sample-based testing for invoice testing, and wage requirements. In this effort, we employed a judgmental sampling design to obtain broad exposure to numerous facets of the areas we reviewed. This non-statistical sample design did not allow projection of the test results to the universe from which the samples were selected.

Computer-Processed Data

During our audit, we obtained information from the Unified Financial Management System, CN3S's accounting system, and CN3S and its subcontractor's electronic payroll systems. We did not test the reliability of those systems as a whole, therefore any findings identified involving information from those systems were verified with documentation from other sources.

APPENDIX 2: Schedule of Dollar-Related Findings

Description	Contract No.	Amount	Page
Questioned Costs: ¹³			
Unsupported Overtime Contractor Hours	15JA0518C00000526	4,160	14
TOTAL DOLLAR-RELATED FINDINGS		<u>\$4,160</u>	

¹³ **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. Questioned costs may be remedied by offset, waiver, recovery of funds, the provision of supporting documentation, or contract ratification, where appropriate.

APPENDIX 3: Executive Office for United States Attorneys' Response to the Draft Audit Report



U.S. Department of Justice

Executive Office for United States Attorneys

Office of the Director

Room 2261, RFK Main Justice Building
950 Pennsylvania Avenue, NW
Washington, DC 20530

(202) 252-1000

MEMORANDUM

DATE: January 13, 2022

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

A handwritten signature in blue ink that reads "Monty Wilkinson".

FROM: Monty Wilkinson
Director

SUBJECT: Response to the Inspector General's Formal Draft Report for the *Audit of the Executive Office for United States Attorneys' Contracts Awarded to the Cherokee Nation 3S, LLC for Legal and Other Support Services*

The Executive Office for United States Attorneys (EOUSA) appreciates the opportunity to review the Office of the Inspector General's formal draft report titled, *Audit of the Executive Office for United States Attorneys' Contracts Awarded to the Cherokee Nation 3S, LLC for Legal and Other Support Services*, and provides the following comments in response to the 13 recommendations directed to EOUSA.

Recommendation No. 1: Ensure its COR develops a contractor evaluation schedule, document the results of those evaluations, and provide the results to CN3S as required by the contract.

EOUSA's Response: Concur. EOUSA understands the importance that timely contractor performance evaluations play in effective contract performance monitoring. EOUSA has plans to start an acquisition workforce-wide initiative in Fiscal Year (FY) 2022 to ensure that contractor past performance monitoring and documentation is completed for all applicable contract actions. As an example, and related to EOUSA's response below to Recommendation No. 4, EOUSA has been working to secure the necessary system permissions to access the Contractor Performance Assessment Reporting System (CPARS), which will improve our ability to directly manage and oversee the evaluation process, as well as leverage the automated system-generated notifications for reminding district personnel of regular performance evaluation during contract performance.

Recommendation No. 2: Ensure that a work plan for the MMIP Coordinator is developed and implemented and that contractor performance is evaluated as required by the contract.

EOUSA's Response: Concur.

Recommendation No. 3: Review its contracts with CN3S and ensure that adequate contractor performance monitoring and quality assurance requirements are included on future similar contract vehicles.

EOUSA's Response: Concur.

Recommendation No. 4: Ensure that contractor performance evaluations are completed and entered into CPARS in a timely manner as required by the FAR.

EOUSA's Response: Concur. Prior to September 2021, EOUSA did not have system access rights (i.e., in a Focal Point role) in the CPARS portal. This new access level will give EOUSA the ability to proactively manage, assign, and provide oversight of evaluations for applicable contract actions, including those held by CN3S, which were reviewed as part of this audit. EOUSA has taken the following actions to remedy the lapse in CPARS reporting for the contracts reviewed: (1) Contract 0124 (MMIP) – CPARS was completed timely on this contract. EOUSA received a CPARS NOTIFICATION confirmation email as generated by the CPARS system, dated May 28, 2021, reflecting this completion; and (2) Contract 0526 (CAS) – CPARS records have been drafted and processed as follows: Year One – drafted, entered in CPARS in September 2021; Year Two – while this was drafted in October 2021, due to a CPARS system limitation, the draft is in “held” status until the system releases it after the Year One evaluation is posted for 60 days; and Year Three – holding until the system permits entry (see system limitation issue as noted for Year Two).

Recommendation No. 5: Develop and implement a meaningful QASP or equivalent that would serve as a framework for post-award administration and oversight.

EOUSA's Response: Concur. EOUSA agrees it is important to ensure appropriate contract performance monitoring for all contracts. The existing QASP will be updated to include a monitoring process appropriate for the type of contract and services being performed.

Recommendation No. 6: Work with the Department of Labor, and as necessary CN3S, to include referrals to ensure CN3S develops and implements written procedures to ensure that contractor personnel, whether employed by CN3S or a subcontractor, are paid at least the minimum wage established by DOL WD.

EOUSA's Response: Concur. EOUSA agrees that all contractor personnel must be paid at least the minimum wage established by the Department of Labor (DOL) Wage Determinations (WDs). Because EOUSA cannot audit or investigate alleged or apparent non-compliances, nor direct a contractor regarding corrective actions that may be necessary, EOUSA has referred

these two contracts to the Regional Enforcement Coordinator – Government Contracts in DOL’s Wage and Hour Division for coordination of DOL’s review of the audit findings and to determine next steps, if any, in ensuring compliance on the contractor’s part. Pursuant to IAW FAR 22.1004(e), DOL has sole authority for enforcement (ref: 29 CFR Part 4, Subpart D) of the Service Contract Labor Standards (SCLS) Act and all associated minimum wage requirements to include investigation and determination of whether a contractor has properly complied with payment of wages and benefits.

Recommendation No. 7: Work with the Department of Labor, and as necessary CN3S, to include referrals to ensure CN3S identifies and remedies any amounts owed to contractor personnel for incorrect wage rates, whether employed by CN3S or its subcontractor.

EOUSA’s Response: Concur. As noted in our response to Recommendation No. 6, EOUSA has referred these two contracts to the Regional Enforcement Coordinator – Government Contracts in DOL’s Wage and Hour Division for coordination of DOL’s review of the audit findings and to determine next steps, if any, in ensuring compliance on the contractor’s part.

Recommendation No. 8: Develop and implement policies and procedures to ensure DOL WDs are incorporated into its contracts when exercising option years.

EOUSA’s Response: Concur. Due to an administrative error, the revised WDs for CN3S’s contracts were erroneously omitted at the time of option exercise. To mitigate the risk of such administrative errors in future contract administration, EOUSA has implemented the following additional internal control measures: (1) supervisory review (one level above the contracting officer) is required for all post-award contract modifications to ensure that all requisite actions have been completed and documentation prepared prior to option exercise; and (2) acquisition workforce-wide training was developed and presented with a key focus on post-award service contract administration to include incorporation and negotiation and settlement of subsequent requests for equitable adjustments resulting from SCLS Act WD revision updates at time of option exercise. This training was provided in December 2020 across all 94 districts to all of EOUSA’s and United States Attorneys’ offices contracting officer community. A recording of the training session, along with the training slide deck, is posted to the Acquisition Staff’s webpage for ease of reference and training refreshers for the workforce community. EOUSA will include this training in relevant upcoming courses.

Recommendation No. 9: Work with the Department of Labor, and as necessary CN3S, to include referrals to ensure CN3S identifies and remedies any amounts owed to contractor personnel for incorrect H&W rates associated with the 2018 contract.

EOUSA’s Response: Concur. As noted in our response to Recommendation No. 6, EOUSA has referred these two contracts to the Regional Enforcement Coordinator – Government Contracts in DOL’s Wage and Hour Division for coordination of DOL’s review of the audit findings and to determine next steps, if any, in ensuring compliance on the contractor’s part.

Recommendation No. 10: Modify the 2018 and 2020 contracts to include FAR clause 52.203-17 as required by federal policy.

EOUSA's Response: Concur. Please see our response below to Recommendation No. 11. Both contracts were modified on August 13, 2021, to include the required clause.

Recommendation No. 11: Ensure the COs assigned to the two contracts comply with the requirements in PGD 16-05, including: (1) provide contractors with the “Whistleblower Information for DOJ Contractors, Subcontractors, and Grantees” document (Whistleblower Information document); (2) direct the contractors and subcontractors to distribute the Whistleblower Information document to their employees; and (3) direct the contractor to provide an affirmative response notifying the DOJ of their successful distribution of the Whistleblower Information document to its employees, which should be added to the contract file.

EOUSA's Response: Concur. This is a very complex policy change and one that EOUSA is working diligently to stay abreast of to ensure our acquisition workforce is made aware of the multitude of reporting and notification requirements surrounding this clause.

Recommendation No. 12: Work with CN3S to remedy \$4,160 in unsupported contractor hours billed and paid.

EOUSA's Response: Concur. EOUSA agrees overtime hours worked should be documented to ensure adequate support is provided for billings. To this end, the district has established a process whereby anticipated overtime hours are now required to be authorized in advance by the Administrative Officer in writing via memorandum.

Recommendation No. 13: Ensure EOUSA staff are complying with its own policies and procedures for receiving, reviewing, and processing contractor invoices, which includes ensuring that contractor invoices are adequately supported, and contractor timesheets are properly authorized.

EOUSA's Response: Concur. EOUSA will ensure relevant staff are familiar with, and adhering to, our existing policies and procedures.

APPENDIX 4: Cherokee Nation 3S, LLC's Response to the Draft Audit Report

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December 22, 2021

David J. Gaschke
Regional Audit Manager
San Francisco Regional Audit Office
Office of the Inspector General
U.S. Department of Justice
90 7th Street, Suite 3-100
San Francisco, CA 94103

Subject: Response to the Office of Inspector General's (OIG) Draft Audit Report: Audit of the Executive Office for United States Attorneys (EOUSA) EOUSA labor hour contracts with Cherokee Nation 3S, LLC for Legal and Other Support Services

Mr. Gashke,

Cherokee Nation 3S, LLC ("CN3S") appreciates the opportunity to provide a response to the Office of the Inspector General's above-referenced report. CN3S values both our contracts and relationships with Department of Justice; the recommendations made to the EOUSA in this audit report will be of great assistance in improving current processes and procedures to ensure compliance with all applicable contract requirements in the future.

The following recommendations are for EOUSA and not for CN3S. However, CN3S will support EOUSA as needed:

- *Recommendation 1:* Ensure its COR develops a contractor evaluation schedule, document the results of those evaluations, and provide the results to CN3S as required by the contract.
- *Recommendation 2:* Ensure that a work plan for the Missing and Murdered Indigenous People ("MMIP") Coordinator is developed and implemented and that contractor performance is evaluated as required by the contract.
- *Recommendation 3:* Review its (EOUSA's) contracts with CN3S and ensure that adequate contractor performance monitoring and quality assurance requirements are included on future similar contract vehicles.
- *Recommendation 4:* Ensure that contractor performance evaluations are completed and entered into CPARS in a timely manner as required by the FAR.

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- *Recommendation 5:* Develop and implement a meaningful Quality Assurance Surveillance Plan ("QASP") or equivalent that would serve as a framework for post-award administration and oversight.
- *Recommendation 8:* Develop and implement policies and procedures to ensure DOL WDs are incorporated into its contracts when exercising option years.
- *Recommendation 10:* Modify the 2018 and 2020 contracts to include FAR clause 52.203-17 as required by federal policy.
- *Recommendation 11:* Ensure the COs assigned to the two contracts comply with the requirements in PGD 16-05, including: (1) provide contractors with the "Whistleblower Information for DOJ Contractors, Subcontractors, and Grantees" document (Whistleblower Information document); (2) direct the contractors and subcontractors to distribute the Whistleblower Information document to their employees; and (3) direct the contractor to provide an affirmative response notifying the DOJ of their successful distribution of the Whistleblower Information document to its employees, which should be added to the contract file.
- *Recommendation 13:* Ensure EOUSA staff are complying with its own policies and procedures for receiving, reviewing, and processing contractor invoices, which includes ensuring that contractor invoices are adequately supported, and contractor timesheets are properly authorized.

The following recommendations were related to contractor-related performance. Once notified, CN3S worked swiftly to correct each of these and stands committed to ensuring future compliance is maintained.

- *Recommendation 6:* Work with the Department of Labor, and as necessary CN3S, to include referrals to ensure CN3S develops and implements written procedures to ensure that contractor personnel, whether employed by CN3S or a subcontractor, are paid at least the minimum wage established by DOL WD.
 - CN3S Response: CN3S acknowledges this recommendation, which is the result of an isolated incident involving one CN3S employee and one subcontractor employee. CN3S has identified the cause and made the appropriate pay adjustment.



- *Recommendation 7:* Work with the Department of Labor, and as necessary CN3S, to include referrals to ensure CN3S identifies and remedies any amounts owed to contractor personnel for incorrect wage rates, whether employed by CN3S or its subcontractor.
 - CN3S Response: CN3S acknowledges this recommendation and took immediate action to ensure employees were accurately compensated once this issue was discovered during audit. The CN3S employee in question as a result of the audit has been accurately compensated as of November 26, 2021. CN3S confirmed with our subcontractor on December 17, 2021 that their employee has been accurately compensated as well.
- *Recommendation 9:* Work with the Department of Labor, and as necessary CN3S, to include referrals to ensure CN3S identifies and remedies any amounts owed to contractor personnel for incorrect H&W rates associated with the 2018 contract.
 - CN3S Response: CN3S acknowledges this recommendation and will support EOUSA as needed. CN3S identified the error and accurately compensated the two employees in question, as described in the report for the two-week period, which totaled a combined \$658 in back pay to the employees
- *Recommendation 12:* Work with CN3S to remedy \$4,160 in unsupported contractor hours billed and paid.
 - CN3S Response: CN3S acknowledges this recommendation and will support EOUSA in confirming hours worked were necessary and provided to further contract goals.

Respectfully,

DocuSigned by:

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APPENDIX 5: Office of the Inspector General Analysis and Summary of Actions Necessary to Close the Report

The OIG provided a draft of this report to Executive Office for United States Attorneys' (EOUSA) and Cherokee Nation 3S, LLC (CN3S). EOUSA's response is incorporated in Appendix 3 of this final report and CN3S's response is incorporated as Appendix 4. In response to our audit report, EOUSA concurred with our recommendations and discussed the actions it will implement in response to our findings and recommendations. As a result, the status of the audit report is resolved. CN3S did not specifically address all of the recommendations but discussed actions it will complete to support recommendations related to contractor performance. The following provides the OIG analysis of the responses and summary of actions necessary to close the report.

Recommendations for EOUSA:

- 1. Ensure its COR develops a contractor evaluation schedule, documents the results of those evaluations, and provides the results to CN3S as required by the contract.**

Resolved. EOUSA concurred with our recommendation and stated that it understands the importance that timely contractor performance evaluations play in effective contract performance monitoring. EOUSA stated that it has plans to start an acquisition workforce-wide initiative in fiscal year 2022 to ensure that contractor past performance monitoring and documentation is completed for all applicable contract actions. EOUSA also stated that it is working to secure the necessary system permissions to access the Contractor Performance Assessment Reporting System (CPARS), which will improve its ability to directly manage and oversee the evaluation process, as well as leverage the automated system-generated notifications for reminding district personnel of regular performance evaluation during contract performance.

This recommendation can be closed when we receive evidence that EOUSA has developed and implemented a contractor evaluation schedule, to include, documenting the results of those evaluations, and providing the results to CN3S as required by the contract.

- 2. Ensure that a work plan for the MMIP Coordinator is developed and implemented and that contractor performance is evaluated as required by the contract.**

Resolved. EOUSA concurred with our recommendation.

This recommendation can be closed when we receive evidence that EOUSA has developed and implemented a work plan for the MMIP Coordinator and that contractor performance is evaluated as required by the contract.

- 3. Review its contracts with CN3S and ensure that adequate contractor performance monitoring and quality assurance requirements are included on future similar contract vehicles.**

Resolved. EOUSA concurred with our recommendation.

This recommendation can be closed when EOUSA reviews its contract with CN3S and ensures that adequate contractor performance monitoring and quality assurance requirements are included on future similar contract vehicles.

- 4. Ensure that contractor performance evaluations are completed and entered into CPARS in a timely manner as required by the FAR.**

Resolved. EOUSA concurred with our recommendation and stated that prior to September 2021, it did not have system access rights in the CPARS portal. EOUSA stated that the new access level will give it the ability to proactively manage, assign, and provide oversight of evaluations for applicable contract actions, including those held by CN3S. Further, EOUSA stated that the CPARS evaluation for the 2020 contract was timely. For its 2018 contract, EOUSA stated it has drafted and entered its Year 1 CPARS evaluation in September 2021, and that the draft is in a held status until the system releases it once it has been posted for 60 days. Lastly, EOUSA stated that the Year 2 CPARS evaluation has not been entered due to system limitations and that the Year 3 CPARS evaluation is being held until the system limitation issue is resolved.

This recommendation can be closed when we receive evidence that contractor performance evaluations are completed and entered into CPARS in a timely manner as required by the FAR.

- 5. Develop and implement a meaningful QASP or equivalent that would serve as a framework for post-award administration and oversight.**

Resolved. EOUSA concurred with our recommendation and stated that it agrees it is important to ensure appropriate contract performance monitoring for all contracts. The existing QASP will be updated to include a monitoring process appropriate for the type of contract and services being performed.

This recommendation can be closed when receive evidence that EOUSA has developed and implemented a meaningful QASP or equivalent that includes a monitoring process appropriate for the type of contract and services being performed that will serve as a framework for post-award administration and oversight.

6. **Work with the Department of Labor, and as necessary CN3S, to include referrals to ensure CN3S develops and implements written procedures to ensure that contractor personnel, whether employed by CN3S or a subcontractor, are paid at least the minimum wage established by DOL WD.**

Resolved. EOUSA concurred with our recommendation and stated that it agrees that all contractor personnel must be paid at least the minimum wage established by the DOL wage determinations. EOUSA stated that because it cannot audit or investigate alleged or apparent non-compliances, nor direct a contractor regarding corrective actions that may be necessary, EOUSA has referred these two contracts reviewed as part of this audit to the Regional Enforcement Coordinator – Government Contracts in DOL’s Wage and Hour Division, for coordination of DOL’s review of the audit findings and to determine next steps, if any, in ensuring compliance on the contractor’s part. EOUSA also stated that pursuant to IAW FAR 22.1004(e), DOL has sole authority for enforcement of the Service Contract Labor Standards Act and all associated minimum wage requirements to include investigation and determination of whether a contractor has properly complied with payment of wages and benefits.

CN3S acknowledged our recommendation and stated that it is the result of an isolated incident involving one CN3S employee and one subcontractor employee. CN3S also stated that it has identified the cause and made the appropriate pay adjustment.

This recommendation can be closed when we receive evidence that EOUSA has worked with the DOL, and as necessary CN3S, to include referrals to ensure CN3S develops and implements written procedures to ensure that contractor personnel, whether employed by CN3S or a subcontractor, are paid at least the minimum wage established by DOL WD. The evidence should also include corrective actions CN3S has taken to identify the cause and the adjustments paid to contractor personnel.

7. **Work with the Department of Labor, and as necessary CN3S, to include referrals to ensure CN3S identifies and remedies any amounts owed to contractor personnel for incorrect wage rates, whether employed by CN3S or its subcontractor.**

Resolved. EOUSA concurred with our recommendation and stated it has referred these two contracts to the Regional Enforcement Coordinator – Government Contracts in DOL’s Wage and Hour Division, for coordination of DOL’s review of the audit findings and to determine next steps, if any, in ensuring compliance on the contractor’s part.

CN3S acknowledged our recommendation and stated that it has taken immediate action to ensure employees were accurately compensated once the issue was discovered during the audit. CN3S also stated that the employee has been accurately compensated as of November 26, 2021, and has confirmed with its subcontractor on December 17, 2021, that the subcontractor employee has also been accurately compensated.

This recommendation can be closed when we receive evidence that EOUSA has worked with the DOL, and as necessary CN3S, to include referrals to ensure CN3S identifies and remedies any

amounts owed to contractor personnel for incorrect wage rates, whether employed by CN3S or its subcontractor. The evidence should also corroborate that the appropriate subcontractor personnel has been accurately compensated.

8. Develop and implement policies and procedures to ensure DOL WDs are incorporated into its contracts when exercising option years.

Resolved. EOUSA concurred with our recommendation and stated that due to an administrative error, the revised WDs for CN3S's contracts were erroneously omitted at the time of option exercise. EOUSA stated that to mitigate the risk of such administrative errors in future contract administration, EOUSA has implemented the following additional internal control measures: (1) supervisory review (one level above the contracting officer) is required for all post-award contract modifications to ensure that all requisite actions have been completed and documentation had been prepared prior to option exercise; and (2) acquisition workforce-wide training was developed and presented with a key focus on post-award service contract administration to include incorporation and negotiation and settlement of subsequent requests for equitable adjustments resulting from SCLS Act WD revision updates at time of option exercise. EOUSA also stated this training was provided in December 2020 across all 94 districts to all of EOUSA's and the United States Attorneys' offices contracting officer community. In addition, a recording of the training session, along with the training slide deck, is posted to the Acquisition Staff's webpage for ease of reference and training refreshers for the workforce community. EOUSA intends to include this training in relevant upcoming courses.

This recommendation can be closed when we receive evidence that EOUSA had developed and implemented policies and procedures to ensure DOL WDs are incorporated into its contracts when exercising option years.

9. Work with the Department of Labor, and as necessary CN3S, to include referrals to ensure CN3S identifies and remedies any amounts owed to contractor personnel for incorrect H&W rates associated with the 2018 contract.

Resolved. EOUSA concurred with our recommendation and stated as noted in its response to recommendation no. 6, EOUSA has referred the two contracts reviewed as part of this audit to the Regional Enforcement Coordinator – Government Contracts in the DOL's Wage and Hour Division for coordination of the DOL's review of the audit findings and to determine next steps, if any, in ensuring compliance on the contractor's part.

CN3S acknowledged our recommendation and stated that it will support EOUSA as needed. CN3S also stated that it has identified the error and accurately compensated the two employees in question, a combined total of \$658 in back pay to the two employees.

This recommendation can be closed when we receive evidence that EOUSA has worked with the DOL, and as necessary CN3S, to include referrals to ensure CN3S identifies and remedies any amounts owed to contractor personnel for incorrect H&W rates associated with the 2018

contract. The evidence should also corroborate that the appropriate contractor personnel has been accurately compensated.

10. **Modify the 2018 and 2020 contracts to include FAR clause 52.203-17 as required by federal policy.**

Resolved. EOUSA concurred with our recommendation and stated that this is a very complex policy change and one that it is working diligently to stay abreast of to ensure its acquisition workforce is made aware of the multitude of reporting and notification requirements surrounding this clause. EOUSA also stated that both contracts were modified on August 13, 2021, to include the required clause.

This recommendation can be closed when we receive evidence that EOUSA has modified the 2018 and 2020 contracts to include FAR clause 52.203-17 as required by federal policy.

11. **Ensure the COs assigned to the two contracts comply with the requirements in PGD 16-05, including: (1) provide contractors with the “Whistleblower Information for DOJ Contractors, Subcontractors, and Grantees” document (Whistleblower Information document); (2) direct the contractors and subcontractors to distribute the Whistleblower Information document to their employees; and (3) direct the contractor to provide an affirmative response notifying the DOJ of their successful distribution of the Whistleblower Information document to its employees, which should be added to the contract file.**

Resolved. EOUSA concurred with our recommendation and stated that this is a very complex policy change and one that it is working diligently to stay abreast of to ensure its acquisition workforce is made aware of the multitude of reporting and notification requirements surrounding this clause.

This recommendation can be closed when we receive evidence that EOUSA had ensured its COs assigned to the two contracts comply with the requirements in PGD 16-05, including: (1) provide contractors with the “Whistleblower Information for DOJ Contractors, Subcontractors, and Grantees” document (Whistleblower Information document); (2) direct the contractors and subcontractors to distribute the Whistleblower Information document to their employees; and (3) direct the contractor to provide an affirmative response notifying the DOJ of their successful distribution of the Whistleblower Information document to its employees, which should be added to the contract file.

12. **Work with CN3S to remedy \$4,160 in unsupported contractor hours billed and paid.**

Resolved. EOUSA concurred with our recommendation and stated that it agrees that overtime hours worked should be documented to ensure adequate support is provided for billings. EOUSA stated that to this end, the U.S. Attorney’s Office has established a process whereby anticipated overtime hours are now required to be authorized in advance by the U.S. Attorney’s Office Administrative Officer in writing through a memorandum.

CN3S acknowledged our recommendation and stated that it will support EOUSA in confirming hours worked were necessary and provided to further contract goals.

This recommendation can be closed when we receive evidence that EOUSA had worked with CN3S to remedy \$4,160 in unsupported contractor hours billed and paid.

- 13. Ensure EOUSA staff are complying with its own policies and procedures for receiving, reviewing, and processing contractor invoices, which includes ensuring that contractor invoices are adequately supported, and contractor timesheets are properly authorized.**

Resolved. EOUSA concurred with our recommendation and stated that it will ensure relevant staff are familiar with, and adhering to, its existing policies and procedures.

This recommendation can be closed when we receive evidence that EOUSA has ensured staff are complying with its own policies and procedures for receiving, reviewing, and processing contractor invoices, which includes ensuring that contractor invoices are adequately supported, and contractor timesheets are properly authorized.