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

Audit of Contracts Awarded by the Boys and Girls Clubs of America, Inc. Using Office of Justice Programs Grant Funds

Audit Division GR-40-16-004 September 2016

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AUDIT OF CONTRACTS AWARDED BY THE BOYS AND GIRLS CLUBS OF AMERICA, INC. USING OFFICE OF JUSTICE PROGRAMS GRANT FUNDS

EXECUTIVE SUMMARY*

The Boys and Girls Clubs of America, Inc. (Boys and Girls Clubs) is a national organization that, among other services, provides assistance to local clubs throughout the United States through contracts for services that it awards from its grant funding. The Department of Justice (DOJ) Office of the Inspector General (OIG) has completed an audit of contracts awarded by the Boys and Girls Clubs using grant funds provided by the Office of Justice Programs (OJP), Office of Juvenile Justice and Delinquency Prevention (OJJDP). From July 2008 through September 2013, OJP awarded the Boys and Girls Clubs six grants and two cooperative agreements totaling $201,621,045 under the National Mentoring Programs and the Tribal Youth National Mentoring Program, which made the Boys and Girls Clubs the single largest recipient of OJJDP grant funds during this period of time.[1] Using these funds, the Boys and Girls Clubs subawarded 45 contracts to 14 contractors, expending $3,186,278 of the $3,722,770 budgeted for contracts.

The objective of our audit was to assess the performance of the Boys and Girls Clubs in areas of management pertaining to contracts it entered into that were funded with OJP grant funds.[2] The management areas included: (1) contract process, (2) sole source justifications, (3) suspension and debarment, (4) lobbying, (5) code of conduct, (6) monitoring of contractors, (7) contract performance, (8) document retention, and (9) billing and payment as related to federal funding subawarded as a contract by the Boys and Girls Clubs for national and tribal mentoring of youth.

We identified significant contract management deficiencies and have questioned $2,962,932 of the award funds received by the Boys and Girls Clubs. Some of the same costs were questioned for multiple reasons – this amount identifies the net questioned costs, which does not include duplicate amounts. The largest portion of these questioned costs relates to the Boys and Girls Clubs' use of

* Some entities and individuals referenced in this report are not identified by name. The decision of whether to include an identity was made on a case-by-case basis upon consideration of relevant factors, including but not limited to prior public association with the Boys and Girls Clubs of America, individual privacy, and connection of the entity or individual to the findings and recommendations of this audit report. In addition, redactions were made to the full version of this report for privacy reasons. The redactions are contained only in Appendix 6, the auditee's response, and are of an individual's name.

[1] Throughout this report, we refer collectively to the six grants and two cooperative agreements as grants.

[2] Our audit was limited to subawarded contracts. We excluded subawards by Boys and Girls Clubs that were made directly to local clubs in the form of grants.

sole source contracts, which are contracts entered into without first conducting an open, free, and fair contract competition. Sole source contracting is allowed under the OJP Financial Guide, but only under certain circumstances, and only when necessary. However, we found that all of the 45 contracts subawarded by the Boys and Girls Clubs during the period of our audit, from July 1, 2008, through September 30, 2013, were done on a sole source basis and that, for most of these, the Boys and Girls Clubs' documentation did not establish the need to use sole source contracting, as required by OJP's Financial Guide. We have therefore questioned $2,962,932 of the $3,186,278 – 93 percent of the contract expenditures – as unsupported.

We also found other deficiencies in the Boys and Girls Clubs' management of its subawarded contracts. For example, the OJP Financial Guide requires grant applicants and their contractors to: (1) certify that no appropriated funds are used to pay for lobbying activity, and (2) disclose any lobbying activity that is paid for with non-federal funds when the awards exceed $100,000. Only one of the Boys and Girls Clubs' contractors exceeded the threshold and should have certified its lobbying activities. However, the Boys and Girls Clubs staff did not require the contractor to actually complete and submit the lobbying certification form. Also, the Boys and Girls Clubs and one of its contractors did not disclose all lobbying activities as required. When lobbying certification and disclosure forms are not submitted, OJP staff may not be able to adequately recommend approval of awards.

OJP requires that its grantees and their contractors maintain a written code of conduct for employees engaged in the awarding and administration of contracts. We determined that the employee code of conduct of one contractor that received $2,570,970 in subawarded contracts from the Boys and Girls Clubs was not in compliance with OJP requirements because it did not specifically address gifts or gratuities and family financial interests. OJP also requires Boys and Girls Clubs to have a documented process to check for organizational conflicts of interest with potential contractors. Boys and Girls Clubs did not consistently ensure its staff and contractors were in compliance with rules pertaining to ethics and conflict of interest, which are also part of code of conduct.

As part of our audit, the OIG tested a sample of billings and payments and found that the Boys and Girls Clubs and its contractors generally retained sufficient documentation. However, we questioned $75,188 as unsupported costs billed primarily by one sole source contractor, and $827 as unallowable costs based on one instance of double billing. We also found that the Boys and Girls Clubs commingled grant funds by using program funds from one grant to pay for contractor expenditures incurred from another grant.

Our report contains 11 recommendations to OJP to remedy $2,962,932 in questioned costs and improve the Boys and Girls Clubs' contract selection and management processes. These items are discussed in detail in the Findings and Recommendations section of the report.

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INTRODUCTION

The Department of Justice (DOJ) Office of the Inspector General (OIG) has completed an audit of contracts awarded by the Boys and Girls Clubs of America, Inc. (Boys and Girls Clubs) using grant funds provided by the Office of Justice Programs (OJP), Office of Juvenile Justice and Delinquency Prevention (OJJDP).[3] From July 2008 through September 2013, OJP awarded the Boys and Girls Clubs six grants and two cooperative agreements totaling $201,621,045 under the National Mentoring Programs and the Tribal Youth National Mentoring Program.[4] Using these funds, the Boys and Girls Clubs subawarded 45 contracts to 14 contractors and expended $3,186,278 of the $3,722,770 budgeted for contracts.

Background

The Office of Justice Programs seeks to provide innovative leadership to federal, state, local, and tribal justice systems by disseminating state of the art knowledge and practices, and it provides grants for the implementation of crime fighting strategies. The OJJDP, a component of OJP, awards funding to support states, local communities, and tribal jurisdictions in their efforts to develop and implement effective programs for juveniles. The Boys and Girls Clubs received funding to enhance mentoring programs in local clubs and with tribal youths throughout the United States.

The OJJDP National Mentoring Programs support organizations in efforts to strengthen and or expand existing mentoring activities within local affiliates. Such activities include direct one-on-one mentoring activities, group mentoring, or peer mentoring services to at-risk and underserved youth populations. Grant recipients are expected to implement programs that will recognize and address factors that can lead to or serve as a catalyst for delinquency or other problem behaviors in underserved youth.

The OJJDP Tribal Youth National Mentoring Program involves a structured relationship between an adult or trained peer and one or more youths in an effort to improve academic performance, social or job skills, or to support behavioral or

[3] Our audit was limited to subawarded contracts. We excluded subawards by Boys and Girls Clubs that were made directly to local clubs in the form of grants. A subaward is an award of financial assistance in the form of money to an eligible subrecipient or a procurement contract made under an award by a recipient.

[4] Throughout this report, we refer collectively to the six grants and two cooperative agreements as grants.

other personal development. Grant recipients are expected to build the capacity of tribes to develop and strengthen tribal youth mentoring programs.

Boys and Girls Clubs of America

The Boys and Girls Clubs of America originated in 1860 in Hartford, Connecticut. In part, its mission is to enable young people to reach their full potential as productive, caring, and responsible citizens. The Boys and Girls Clubs provide programs for young people in:

- education and career;
- character and leadership;
- health and life skills;
- arts; and
- sports, fitness, and recreation.

From July 1, 2008, through September 30, 2013, OJP awarded the Boys and Girls Clubs a total of $201,621,045 to administer the national and tribal mentoring programs as shown in the following table.

Table 1

National Mentoring Programs and Tribal Youth National Mentoring Program Grants Awarded to the Boys and Girls Clubs of America July 1, 2008, through September 30, 2013

Award Number	Program	Award Period	Total Award Budget	Amount Budgeted for Contracts
2008-JU-FX-K010	FY 2008 National Mentoring Programs	07/01/2008 - 09/30/2009	$40,000,000	$923,000
2008-TY-FX-0006	FY 2008 Mentoring Program for At-Risk Tribal Youth	10/01/2008 - 09/30/2009	$2,000,000	$150,000
2009-SC-B9-K010	FY 2009 Recovery Act National Mentoring Program	05/01/2009 - 09/30/2010	$44,400,000	$635,000
2009-TY-FX-0054	FY 2009 Tribal Youth National Mentoring Program	10/01/2009 - 09/30/2010	$1,867,286	$124,000
2010-JU-FX-0004	FY 2010 National Mentoring Programs	10/01/2010 - 09/30/2011	$40,000,000	$739,270
2010-TY-FX-0014	FY 2010 Tribal Youth National Mentoring Program	10/01/2010 - 09/30/2011	$2,043,759	$116,000
2011-MU-MU-0009	FY 2011 National Mentoring Programs	10/01/2011 - 06/30/2013	$48,310,000	$670,500
2012-JU-FX-0006	FY 2012 National Mentoring Programs	10/01/2012 - 09/30/2013	$23,000,000	$365,000
Total	-	-	**$201,621,045**	**$3,722,770**

Source: Office of Justice Programs

Contractors

In Table 1, we identified the OJP budget approval for contracts totaling $3,722,770. From July 2008 through September 2013, the Boys and Girls Clubs made 45 contract subawards to 14 contractors as shown in Table 2, which also shows expenditures under those contracts totaling $3,186,278, or 85.6 percent of the total budgeted for that purpose.

Table 2

Contracts Made by the Boys and Girls Clubs July 1, 2008 through September 30, 2013

Contractor	Description of Service	Amount Budgeted for Contracts	Total Expenditures
FirstPic, Inc.	Assist the Boys and Girls Clubs in administering grants to subrecipients	$2,570,970	$1,959,807
Metcalf Davis	Subrecipient monitoring	$368,500	$450,571
KPMG	Single Audit	$201,000	$223,346
Contractor One	Subrecipient monitoring	$187,000	$166,387
Contractor Two	Web development	$150,000	$121,044
Contractor Three	Design and development of web based management tools system	$105,000	$135,800
Contractor Four	Development of military focused youth resiliency training	$60,000	$54,988
Contractor Five	Audio, visual, and bus rental	$35,000	$29,094
Contractor Six	Designing and developing a Distance Learning Course	$15,000	$11,500
Contractor Seven	Development and recording of distance learning	$10,000	$9,000
Contractor Eight	Professional Writers - Best Practices Manual	$5,000	$5,000
Contractor Nine	Online grant administration workshop	$5,000	$5,000
TBD (Not Awarded)	Enhancements to grant management system	$5,000	$0
TBD (Not Awarded)	Audio, visual, and hosting charges for military teen ambassador training	$2,500	$0
Boys and Girls Clubs of Central Florida	Costs related to national gang symposium	$2,000	$2,000
Contractor Ten	Speakers for 2011 National Gang Symposium	$800	$776
Contractor Ten	2011 National Gang Symposium	$0	$11,965
Total	**-**	**$3,722,770**	**$3,186,278**

Note: The line items for enhancements to the grant management system, audio, visual, and hosting charges for military teen ambassador training, and the 2011 National Gang Symposium are included in this table because those line items were approved by OJP in the budget documents or a post award decision.

Source: Boys and Girls Clubs

We focused portions of our testing as detailed below on the contracts awarded to FirstPic, Inc.; Metcalf Davis, CPA; KPMG, LLP; and Contractor One because payments to those four entities accounted for 88 percent of contract expenditures in our audit period.

- FirstPic, Inc. is a certified small business entity that offers project management consulting services throughout the country. The Boys and Girls Clubs' contract expenditures to FirstPic, Inc. totaled $1,959,807 (62 percent of contract expenditures) under eight grants.
- Metcalf Davis provides tax, audit and assurance, business consulting, valuation, and accounting services. The Boys and Girls Clubs' contract expenditures to Metcalf Davis totaled $450,571 (14 percent of contract expenditures) under seven grants.
- KPMG, an audit, tax, and advisory firm, is a United States member firm of KPMG International Cooperative. The Boys and Girls Clubs' contract expenditures to KPMG totaled $223,346 (7 percent of contract expenditures) under seven grants.
- Contractor One provides services including audit, consulting, and preparation of related Internal Revenue Service forms. The Boys and Girls Clubs' contract expenditures to Contractor One totaled $166,387 (5 percent of contract expenditures) under seven grants.

Audit Objective and Approach

The objective of our audit was to assess the performance of the Boys and Girls Clubs in areas of management pertaining to contracts it entered into that were funded with OJP grant funds.[5] The management areas included: (1) contract process, (2) sole source justifications, (3) suspension and debarment, (4) lobbying, (5) code of conduct, (6) monitoring of contractors, (7) contract performance, (8) document retention, and (9) billing and payment as related to federal funding subawarded as a contract by the Boys and Girls Clubs for national and tribal mentoring of youth.

[5] As noted in Table 2, one local club received a subaward in the form of a $2,000 contract for costs related to a national gang symposium. All other subawards to local clubs were in the form of grants.

FINDINGS AND RECOMMENDATIONS

The Boys and Girls Clubs expended $3,186,278 from July 1, 2008, through September 30, 2013, for 45 contracts, all of which were subawarded on a sole source basis. We question $2,962,932 of this amount as being unsupported because the Boys and Girls Clubs' documentation did not establish that the sole source criteria were met for most of its contracts. One contractor hired by the Boys and Girls Clubs was required to provide lobbying certification forms but did not do so. The Boys and Girls Clubs and one of its contractors did not disclose all lobbying activities as required. We tested grant-funded contract payments and identified $75,188 in unsupported costs, and $827 in unallowable costs. The Boys and Girls Clubs did not consistently ensure its staff and contractors were in compliance with rules pertaining to ethics and conflict of interest, which are part of the code of conduct. Also, the Boys and Girls Clubs commingled grant funds by using the funds from one grant to pay contract expenses from another grant.

Boys and Girls Clubs' Use of Sole Source Contracts

Direct grant recipients such as the Boys and Girls Clubs may subaward contracts using grant funds to procure goods or services from another entity. The general rules for such contracts are provided in the June 2011 *OJP Guide to Procurement Procedures for Recipients of Department of Justice Grants and Cooperative Agreements* (OJP Procurement Guide). The Procurement Guide states that grant applications may include grantee subaward contracts to accomplish part of a project when equipment or materials are required or when the prospective grantee does not have the necessary in-house expertise to accomplish a programmatic goal or objective. Dollar estimates for contracting effort are determined and included in the grant application. The preliminary decision to contract is based upon the grantee's best knowledge of the project requirements. Front-end logistics planning is necessary in order to avoid any duplication of effort, specifically prohibited by government regulations.

In accordance with other federal requirements, the Procurement Guide provides that all procurement transactions be conducted in a manner to provide the maximum practical open and free competition. However, grantees such as the Boys and Girls Clubs may use noncompetitive or sole source procurement if competition is determined to be inadequate. According to the Procurement Guide, grantees may make the initial determination that competition is not feasible when:

- the item of service is available only from a single source,
- the public exigency or emergency for the contractual requirement will not permit a delay resulting from a competitive solicitation, or

- after solicitation of a number of sources, competition is considered inadequate.[6]

Also, the Boys and Girls Clubs' staff must receive prior approval from the awarding agency (OJP) for all sole source procurements (contracts) in excess of $100,000.

The Procurement Guide also provides the types of contracts that can be awarded. Grantees determine which type of contract instrument is appropriate for the procurement and for promoting the best interest of the program or project involved.

The Boys and Girls Clubs made sole source awards for all 45 contracts it awarded using grant funds during the period covered by our audit. For the 45 contracts, 30 were firm-fixed price and 7 were fixed-price with escalation as shown in Appendix 3.[7] In addition to the contract types listed above, the Boys and Girls Clubs staff identified the eight contracts with FirstPic, Inc. as "fees paid not to exceed contract based upon satisfactory contract delivery." The contracts with FirstPic, Inc. read that final payment would be held until all terms, conditions, and specifications were met and certified.

To justify its sole source contract awards, in accordance with the OJP Financial Guide, the Boys and Girls Clubs must maintain documentation reflecting actions taken and the reasons for sole source actions. Such documentation establishes an audit trail to support the award of each contract. We reviewed the sole source basis for the 45 contracts subawarded by the Boys and Girls Clubs.[8] We determined that the Boys and Girls Clubs' documentation did not establish that the sole source criteria were met for 38 of the 45 contracts, and we therefore question $2,962,932 as unsupported costs. Our findings are presented below in two categories: (1) no sole source justification documentation, and (2) inadequate sole source justification documentation.

[6] For a more extensive discussion of the requirements for sole source contracts considered in our analysis, see Appendix 4 of this report.

[7] Firm-fixed price contracts are applied when fair and reasonable prices can be established. Fixed-price with escalation contracts are applied when the market or labor conditions are unstable over an extended production period. In the following section, we provide examples that the Boys and Girls Clubs did not provide market research or other price analysis to support the contract amounts subawarded.

[8] The Boys and Girls Clubs indicated its intent to award 45 contracts, but completed only 41 contract actions. We reviewed the basis of the sole source justification for the awarding of 45 contracts.

No Sole Source Justification Documentation - Grantees and their contractors must retain all financial records, supporting documents, statistical records, and all other records pertinent to the award. The records must be retained for at least 3 years after receiving notification from the awarding agency that the award has been closed. These records include the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price. The official contract file should reflect in detail all of the steps in the procurement process and that file serves as the official accountability document.

The Boys and Girls Clubs did not have any documentation to support its sole source justifications for 17 of the 45 subawarded contracts during the period covered by our audit. Table 3 shows those 17 contracts and the associated expenditures totaling $505,148.

Table 3

Contracts Subawarded with No Sole Source Justification Documentation from July 1, 2008, through September 30, 2013

Grant Number	Contract	Expenditures
2008-JU-FX-K010	Metcalf Davis	$94,620
2008-JU-FX-K010	Contractor One	$31,773
2008-JU-FX-K010	Contractor Three	$1,800
2010-JU-FX-0004	Metcalf Davis	$90,602
2010-JU-FX-0004	Contractor One	$41,176
2010-JU-FX-0004	Contractor Eight	$5,000
2010-JU-FX-0004	Contractor Seven	$9,000
2010-JU-FX-0004	Contractor Ten	$776
2010-JU-FX-0004	Contractor Ten	$11,965
2010-JU-FX-0004	Boys and Girls Clubs of Central Florida	$2,000
2010-TY-FX-0014	Metcalf Davis	$7,950
2010-TY-FX-0014	Contractor One	$0
2011-MU-MU-0009	Metcalf Davis	$90,034
2011-MU-MU-0009	Contractor One	$38,116
2011-MU-MU-0009	Contractor Six	$11,500
2012-JU-FX-0006	Metcalf Davis	$52,267
2012-JU-FX-0006	Contractor One	$16,569
TOTAL	-	**$505,148**

Source: Boys and Girls Clubs

During the audit, the Boys and Girls Clubs officials provided the OIG with explanations as to why the contracts were subawarded, but the contract documents did not include support to justify the sole source basis. Moreover, we found evidence in some of the contract documents that conducting an open competition would have been possible. For example, as presented in the Billing and Payment section, one contractor that received a sole source contract was under-staffed and therefore hired other vendors to complete a portion of the work, suggesting that other vendors may have been able to bid on the original contract had the Boys and Girls Clubs not awarded the contract on a sole source basis. We also identified instances when more than one contractor was hired to provide the same service under the same grant, suggesting that the selected contractors may not have been sole source providers. In one such instance, under Grant Number 2008-JU-FX-K010, the Boys and Girls Clubs subawarded sole source contracts to both Metcalf Davis and Contractor One to provide the same subrecipient monitoring service at local Boys and Girls Clubs. Neither the staff's explanations nor the contract documents were sufficient to support why the monitoring contracts were not competed. These contract documents also lacked the requisite price analyses to support the reasonableness of the contract amounts.

For each of these 17 contracts, the Boys and Girls Clubs did not create an audit trail to support its decision and demonstrate its compliance with the rules governing the use of sole source awards. We therefore consider the $505,148 as unsupported questioned costs.

We recommend OJP remedy $505,148 in unsupported costs due to the absence of justification in the selection of contracts on a sole source basis. We also recommend OJP ensure the Boys and Girls Clubs implement procedures for conducting procurements that comply with the rules governing sole source awards; provide for open, free, and fair competition; and adequately document the procurement process, including market research, cost and price analyses, and the justification for any sole source award.

Inadequate Sole Source Justification Documentation - We determined the Boys and Girls Clubs' sole source justifications were inadequate by not meeting the sole source criteria for 21 of the 45 subawarded contracts covered by our audit. Table 4 shows these 21 contracts and associated expenditures totaling $2,457,784.

Table 4

Contracts Subawarded with Inadequate Sole Source Justification Documentation from July 1, 2008, through September 30, 2013

Grant Number	Contract	Expenditures
2008-JU-FX-K010	Contractor Two	$54,989
2008-JU-FX-K010	Contractor Nine	$5,000
2008-JU-FX-K010	FirstPic, Inc.	$404,304
2008-TY-FX-0006	FirstPic, Inc.	$121,534
2009-SC-B9-K010	Metcalf Davis	$115,098
2009-SC-B9-K010	Contractor One	$38,753
2009-SC-B9-K010	Contractor Three	$30,000
2009-SC-B9-K010	Contractor Two	$36,055
2009-SC-B9-K010	FirstPic, Inc.	$375,625
2009-TY-FX-0054	Metcalf Davis	$0
2009-TY-FX-0054	Contractor One	$0
2009-TY-FX-0054	FirstPic, Inc.	$95,000
2010-JU-FX-0004	Contractor Two	$30,000
2010-JU-FX-0004	Contractor Three	$75,000
2010-JU-FX-0004	Contractor Five	$29,094
2010-JU-FX-0004	FirstPic, Inc.	$315,952
2010-TY-FX-0014	FirstPic, Inc.	$84,999
2011-MU-MU-0009	Contractor Four	$54,988
2011-MU-MU-0009	FirstPic, Inc.	$409,989
2012-JU-FX-0006	Contractor Three	$29,000
2012-JU-FX-0006	FirstPic, Inc.	$152,404
TOTAL	**-**	**$2,457,784**

Source: Boys and Girls Clubs

For each of these contracts, the contract files contained sole source justification documents, but the contract files did not include adequate support for the statements made in those justification documents. In some instances, the documentation did not address the basis for determining whether a specific contractor was the only contractor qualified or available, or it lacked an assessment of the contractors' experience and abilities to accomplish timetable requirements for completing needed services. During the audit, the Boys and Girls Clubs officials provided the OIG with additional explanations as to why the contracts were subawarded, but we found that the contract files did not contain documentation to support those additional explanations.

The sole source justifications for contracts must provide maximum evidence that open, free, and fair competition was conducted or only one contractor is available to provide contractual services for a given project. Our review of these 21 contracts found that this requirement was not met for any of them. For example, we reviewed the statement of work for all technology services to determine whether the services provided were unique to the awarded contractor. While the specific deliverables differed, the skills and capabilities required under each of the contracts appeared to be software development, online interactive programming, database management, and training. The documentation did not establish, and it was not otherwise clear to us, why these skills and capabilities were considered so unique to the contractors selected for the sole-source awards that competitive bidding was deemed to be unnecessary.

For one grant, Grant Number 2008-JU-FX-K010, Contractor Two received a sole source contract for computer system maintenance, operation, and technical support. The computer system was developed by a third party contractor using an off-the-shelf application. The justification for the award stated that Contractor Two had success as the lowest bidder for recent similar work and could perform more timely work than other potential contractors because it had knowledge of the computer system. However, we noted that the Boys and Girls Clubs used other contractors to provide similar services, and according to the sole source justifications for these other contractors, they too had an understanding of the Boys and Girls Clubs organization and computer applications. In addition, the contract with Contractor Two was subawarded 4 months after the solicitation deadline for submitting a grant application and there was no indication in the documents we reviewed that this period of time would have been insufficient to conduct a competitive bidding process.

Because we found the justifications for these 21 contracts to be inadequate, we consider the $2,457,784 as unsupported questioned costs, and we recommend OJP remedy these unsupported costs resulting from inadequate justification in the selection of contractors on a sole source basis.

We note that the $2,457,784 in questioned costs includes six contracts with FirstPic, Inc. that each exceeded $100,000 and were approved by OJP officials. The sole source justification documents submitted to OJP cited FirstPic, Inc.'s long history of working with the Boys and Girls Clubs, proven experience, and unique capabilities. However, the justification did not provide support for the assertion that those capabilities were unique to FirstPic, Inc., as required by the OJP Financial Guide. The justification also did not identify other vendors or the specific capabilities those vendors lacked or other reasons for rejecting consideration of other vendors through a standard competitive bidding process.

Additionally, as noted in Appendix 4, 28 C.F.R. Part 70.45 requires that "some form of cost or price analysis must be made and documented in the procurement files in connection with every procurement action." The C.F.R. defines "cost analysis" as "the review and evaluation of each element of cost to determine reasonableness, allocability, and allowability." As part of OJP staff's initial review of

grant applications, OJP requires that all applicants provide budget details to support all contract amounts. We found that for all six contracts, the Boys and Girls Clubs provided budget details for FirstPic, Inc.'s quotes, but it did not provide any market research or other price analysis in support of the budgeted amounts.[9] Moreover, in our judgment, the sole source justifications did not provide adequate support to conclude that FirstPic, Inc. was the only contractor available or qualified exclusive of all other contractors, or that any public exigency required the Boys and Girls Clubs to forego a competitive bidding process.

The OJP program manager confirmed that OJP approved the sole source justifications for the six FirstPic, Inc., contracts over $100,000. Yet we found that OJP did not document in the Grants Management System its basis for the approval. Based on the documentation we reviewed during our audit, we do not believe that there was a sufficient basis to approve the six sole source justifications.

Suspension and Debarment

OJP's Financial Guide requires most grant recipients to certify that the applicant and its principals are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of federal benefits by a state or federal court, or voluntarily excluded from covered transactions by any federal department or agency. The guide also prohibits a commercial organization that is ineligible to receive a direct award under a specific appropriation or program to be named as a sole source contractor in a grant application by an eligible applicant.

We searched the System for Award Management listing of excluded parties for the Boys and Girls Clubs and each of its contractors.[10] We found no active exclusion records for any of the identified entities or individuals selected as contractors.

Lobbying

According to the OJP Financial Guide, no appropriated funds may be expended for lobbying activities by the recipient of a federal grant. OJP requires award applicants to verify compliance with this restriction before it will recommend the applicant for an award. For awards exceeding $100,000, applicants must submit:

- a Certification Regarding Lobbying form stating that the applicant has not and will not make any prohibited payment, and

[9] The OJP Procurement Guide states that detailed in-house planning is necessary in order to effectively award a contract, and a checklist follows that asks, "has a market survey been conducted and documented to determine if there are contractors available to satisfy the requirement?"

[10] The System for Award Management is the required federal database that every vendor must be registered in order to conduct business with the government.

- a Disclosure of Lobbying Activities form, if any non-federal funds have been paid or will be paid for lobbying activities.[11]

The restriction on the use of appropriated funds and the requirement for certification applies to all grant recipients (such as the Boys and Girls Clubs), as well as subrecipients (such as the Boys and Girls Clubs' contractors). The language of the certification is therefore required to be included in subrecipient documents to ensure that contractors are required to certify and disclose lobbying activities to the grantee (for purposes of this audit, the Boys and Girls Clubs). Similarly, when a contract exceeds $100,000, contractors are also required to submit certification and disclosure forms to the grantee. As the recipient of the federal grant, the grantee is required to maintain the certifications of its contractors.

Lobbying Certification Requirements

The OJP Financial Guide requires submission of the certification prior to a recommendation for or against an award to allow for appropriate consideration of the grantee's compliance with lobbying requirements. The same requirement applies to contractors, who must submit the required certification to the grantee prior to the grantee making the subaward to ensure that grantees properly consider contractors' compliance with lobbying restrictions.

Certification Regarding Lobbying Forms filed by the Boys and Girls Clubs - To test the Boys and Girls Clubs' compliance with the certification requirement, we used OJP's Grants Management System (GMS) to identify the Boys and Girls Clubs' grant applications. We reviewed the application documents to verify whether the appropriate certification forms had been submitted. We found that when applying for the grants included in this audit, the Boys and Girls Clubs had submitted the required certification forms to OJP indicating that it had not and would not use appropriated funds for lobbying.

Certification Regarding Lobbying Forms filed by Contractors - We also reviewed the Boys and Girls Clubs' contracts and found instructions were included for the contractors to file the required lobbying certification as required by OJP. The contract made reference to the lobbying certification as a "signed form attached." Of the contractors included in our review, only FirstPic, Inc. met the threshold of $100,000 requiring the submission of separate signed Certification Regarding Lobbying form for six of its contracts. The Boys and Girls Clubs' staff did not require the contractor to actually complete and submit the referenced lobbying certification form. Instead, the Boys and Girls Clubs officials told us the signed contracts were intended to serve as the lobbying certification by the contractor. The signed contracts did not explicitly certify that contractors had not made prohibited payments for lobbying.

[11] The complete title of the lobbying certification form is "Certifications Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters, and Drug-Free Workplace Requirements."

We recommend that OJP ensure the Boys and Girls Clubs complies with the OJP Financial Guide requirement for explicit lobbying certification from contractors that grant funds have not and will not be used for lobbying activity.

Lobbying Disclosure Requirements

The certification requirements for applicants for awards (or subawarded contracts) exceeding $100,000 include a requirement for disclosure of any non-federal funds that have been paid for lobbying activities. The applicant must make this disclosure by submitting a Disclosure of Lobbying Activities form. For contractors, the disclosure forms are submitted to the grantee, which is then required to forward the forms to the federal agency making the award.

Disclosure Forms filed by the Boys and Girls Clubs - To test the Boys and Girls Clubs' compliance with the disclosure requirements, we used OJP's Grants Management System to identify the Boys and Girls Clubs' grant applications. We reviewed the application documents to verify whether the appropriate disclosure forms had been submitted to OJP. We found that the Boys and Girls Clubs had submitted its required disclosure forms identifying lobbying registrants and individual lobbyists who had conducted lobbying efforts on behalf of the Boys and Girls Clubs. However, the disclosure forms were not always complete.

To determine whether the Boys and Girls Clubs' disclosures were complete and accurate, we reviewed separate disclosure reports filed with Secretaries of State by lobbying registrants and individual lobbyists to determine whether those registrants and lobbyists that identified the Boys and Girls Clubs as a lobbying client were also reported by the Boys and Girls Clubs to OJP.[12] We identified 6 lobbying registrants and 10 individual lobbyists who identified the Boys and Girls Clubs as a client during the periods related to the grants in our review. As shown in Table 5, the Boys and Girls Clubs did not identify 2 of these 6 lobbying registrants and 4 of these 10 individual lobbyists on the disclosure forms it submitted with its OJP grant applications for at least 1 year in which the registrants and lobbyists identified the Boys and Girls Clubs as a client.

In 2008, the Boys and Girls Clubs did not list FirstPic, Inc. as a lobbying registrant, although it did identify FirstPic, Inc. as the employer of two individual lobbyists in the disclosure submitted. Also in 2008 and 2009, the Boys and Girls Clubs did not identify two individual lobbyists, although it did include the lobbying registrants that employed the lobbyists.

[12] The Lobbying Disclosure Act of 1995 requires all professional lobbyists to register and file regular, semiannual reports identifying their clients, the issues on which they lobby, and the amount of their compensation. The lobbyist disclosure reports are filed with the Secretary of the Senate's Office of Public Records. According to the Act, a lobbyist is any individual: (1) who is either employed or retained by a client for financial or other compensation, (2) whose services include more than one lobbying contact; and (3) whose lobbying activities constitute 20 percent or more of his or her services' time on behalf of that client during any 6-month period. A lobbying registrant is a person or entity employing an in-house lobbyist that files a registration pursuant to Section 4 of the Lobbying Disclosure Act of 1995.

In 2012, the Boys and Girls Clubs did not identify one lobbying registrant and two individual lobbyists employed by that organization in its application for the OJP grants.

Table 5

The Boys and Girls Clubs Lobbyists
July 1, 2008, through September 30, 2013

	Registrants and Individual Lobbyists that Identified Boys and Girls Clubs as a Client in Disclosures to Secretaries of State	Years for Which Registrants and Lobbyists were not Identified in the Boys and Girls Clubs' Disclosure Forms to OJP
Lobbying Registrants	Potomac Counsel, LLC	
	Van Scoyoc Associates	
	The American Continental Group	
	FirstPic, Inc.	2008
	Boys and Girls Clubs	
	Alston & Bird	2012
Individual Lobbyists	Lobbyist One, Boys and Girls Clubs	
	Lobbyist Two, Boys and Girls Clubs	
	Lobbyist Three, Boys and Girls Clubs	2008, 2009
	Lobbyist Four, FirstPic, Inc.	
	Lobbyist Five, FirstPic, Inc.	
	Lobbyist Six, Van Scoyoc Associates	
	Lobbyist Seven, Van Scoyoc Associates	2008, 2009
	Lobbyist Eight, Potomac/American Continental	
	Lobbyist Nine, Alston & Bird	2012
	Lobbyist Ten, Alston & Bird	2012

Source: OIG Analysis

We discussed the results of our comparison with the Boys and Girls Clubs officials. The officials could not adequately explain the exceptions noted in our comparison.

Disclosure Forms filed by Contractors – As previously discussed, the Boys and Girls Clubs also included instructions for contractors to disclose lobbying activities as required by OJP. The contract made reference to the lobbying disclosure forms. Again, only FirstPic, Inc. met the threshold of $100,000 requiring the submission of separate signed Disclosure of Lobbying Activities form for six of its contracts. The Boys and Girls Clubs' staff did not require the contractor to actually complete and submit the referenced lobbying disclosure form. Instead, the Boys and Girls Clubs officials told us the signed contracts were intended to also serve as the contractor's disclosure of lobbying activities. The signed contracts did not explicitly certify that the contractor had disclosed if any non-federal funds were used for lobbying activities.

We recommend that OJP ensure that the Boys and Girls Clubs and its contractors comply with the requirements of the OJP Financial Guide regarding the proper filing of the lobbying disclosure form.

Compared List of the Boys and Girls Clubs' Lobbyists and Contractors

We also reviewed the lobbying disclosure reports filed by lobbying registrants and individual lobbyists with the Secretary of the Senate's Office of Public Records, to determine whether any of the companies to which the Boys and Girls Clubs awarded contracts had engaged in lobbying activities, or identified the Boys and Girls Clubs as a lobbying client. We found that one contractor, FirstPic, Inc., was involved in lobbying activities for the Boys and Girls Clubs as a lobbying registrant. FirstPic, Inc. also met the threshold of $100,000 requiring the submission of a lobbying disclosure form with its application for each of its contracts but, as described above, the Boys and Girls Clubs did not require FirstPic, Inc. to submit the required disclosure form indicating that it had used only non-appropriated funds to pay for lobbying activities related to the Boys and Girls Clubs of America grant awards.

We asked the Boys and Girls Clubs officials how they ensured grant funds are not used for lobbying expenditures. The officials told us that the Boys and Girls Clubs establish separate contracts for lobbying activity and those contracts are paid with non-federal funds. We reviewed the payments made under the grants to FirstPic, Inc. in detail and found no charges to grant funds for lobbying activities.

Code of Conduct

The OJP Procurement Guide requires that grantees, such as the Boys and Girls Clubs, and subrecipients, such as the Boys and Girls Clubs' contractors, maintain a written code of conduct for employees engaged in the award and administration of contracts. The written code of conduct should include requirements for familiarity with the grantee or subrecipient's code of ethics, prohibitions on the receipt of gifts and gratuities, avoidance of the appearance of a conflict of interest, assurance of no financial interest or immediate family financial interest in entities evaluated for contracts, and reporting of conflicts of interests. Also, according to the OJP Financial Guide, the grantee or subrecipient must have a documented process to check for organizational conflicts of interest with potential contractors. To that end, we assessed the written codes of conduct used by the Boys and Girls Clubs and its contractors. We also assessed the process used by the Boys and Girls to ensure its staff and contractors were in compliance with rules pertaining to the code of conduct, which includes matters such as ethics and conflict of interest.

Written Code of Conduct

We obtained copies of the written code of conduct documents used by the Boys and Girls Clubs, FirstPic, Inc., Metcalf Davis, and Contractor One staff during the period of July 1, 2008, through September 30, 2013. We reviewed the

completed documents to assess compliance with the requirements of the OJP Procurement Guide. Among the four codes of conduct we reviewed, we only found exception with FirstPic, Inc.'s code of conduct documents.

The code of conduct documents we reviewed from FirstPic, Inc. did not address the requirement of familiarity with prohibition on gifts or gratuities or the requirement of ensuring immediate family members have no financial interest in entities evaluated. Absent such provisions, employees may not be fully aware of the applicable requirements and prohibitions, which could lead to actual or potential conflicts of interest among contractors and related parties. We recommend that OJP ensure the Boys and Girls Clubs verifies that all contractors use a written code of conduct document with language that specifically addresses all of the requirements provided in the OJP Procurement Guide.

Code of Conduct Certification and Disclosure Forms

We tested the Boys and Girls Clubs' procedures for documenting that its staff and contractors are aware of and comply with rules regarding ethics and conflicts of interest as listed in the OJP Procurement Guide regarding code of conduct. The Boys and Girls Clubs use three forms designed to ensure code of conduct requirements are met by its staff and contractors. Two forms are completed by staff (Code of Ethics Certificate and Code of Ethics Disclosure Statement) and one form is completed by contractors (Vendor Code of Ethics). Staff members and contractors are required to complete a code of ethics certification and disclosure form as acknowledgement of their familiarity with the code of ethics and confirmation of their lack of conflict of interest during the procurement process. These forms allow for the assessment of staff and contractors' behavior and alertness to situations that may create a conflict of interest or the appearance of one. As described below, we found that all forms selected for testing were not consistently completed by the Boys and Girls Clubs staff and its contractors.

Boys and Girls Clubs Staff Code of Conduct Acknowledgement - We reviewed the Code of Ethics Certificate form and the Code of Ethics Disclosure Statement form used by the Boys and Girls Clubs. We found that those two forms addressed the grant code of conduct requirements. However, when we requested copies of the executed forms to determine whether staff completed these 2 forms during the procurement periods reviewed, the Boys and Girls Clubs officials were not able to provide signed copies for all staff included in the sample testing for the 45 contracts reviewed. A Boys and Girls Clubs official told us that: (1) some of the certificates were not available for our review, (2) certificates were completed by their staff every 3 years for fiscal years 2006 through 2009, or (3) the staff completed training instead of signing the certificates during fiscal year 2012. The Boys and Girls Clubs official told us they believed the forms were not required because the staff working on those contracts had nothing to disclose.

According to the OJP Procurement Guide, we believed those forms should have been available for those 45 contracts. In addition, absent a form there is nothing to support that staff made all of the required disclosures, and no way for

managers to determine that the staff has nothing to disclose. We therefore recommend that OJP ensure the Boys and Girls Clubs staff completes a code of ethics certificate and disclosure statement form during the procurement process for all contracts.

Contractors Code of Conduct Acknowledgement - We also tested completion of the Vendor Code of Ethics form by FirstPic, Inc., Metcalf Davis, Contractor One, and KPMG. The Boys and Girls Clubs require contractors to sign a vendor code of ethics form to help ensure the highest degree of ethical standards is met and there is no conflict of interest on the part of the contractors. In addition, contractors are required on this form to disclose their percentage of annual revenue received from the Boys and Girls Clubs, employment or contractual relationships with any Boys and Girls Clubs staff or their family, ownership or financial stake in the contractor's business by the Boys and Girls Clubs staff or their family, and awareness of any code of ethics violation that could "tarnish the Boys and Girls Clubs' reputation."

Under the processes established by the Boys and Girls Clubs, the 4 selected contractors should have completed a vendor form for each of its 29 contracts with the Boys and Girls Clubs listed in Appendix 3. We were only able to match signed and dated forms for 10 of the 29 contracts. We obtained from the Boys and Girls Clubs some additional signed and undated forms, but we were not able to match those undated forms to any of the remaining 19 contracts. We asked the Boys and Girls Clubs officials for the forms for the remaining 19 contracts. The officials told us that they provided all of the forms available from its contract files. The officials also told us the contractors have long-standing relationships with the Boys and Girls Clubs and have a proven history of ethical and professional conduct. Even so, these forms are an important mechanism to ensure that contractors are reminded of their ethical requirement and to document that they are in compliance with those requirements and are accountable to outside reviewers or others.

Additionally, the Vendor Code of Ethics forms we obtained and reviewed for the 10 contracts referenced above did not include all the required disclosure information, such as the annual revenue each contractor received from the Boys and Girls Clubs. The Boys and Girls Clubs officials told us they intended for the contractors to provide responses to all questions on the form. The Boys and Girls Clubs officials also told us that the forms for contractors have since been modified to specifically request disclosure for all questions at the time of signing, and that they now require the contractor to notify the Boys and Girls Clubs if the disclosure changed during the term of the contract.

Although the Boys and Girls Clubs officials expressed confidence that their contractors had demonstrated a proven history of ethical and professional conduct, there must be a documented process to remind contractors of their obligations and to check for organizational conflict of interest that might exist or arise during the course of an ongoing relationship in accordance with the OJP Financial Guide. We therefore recommend that OJP ensure the Boys and Girls Clubs' contractors include a dated signature and answer all questions for conflicts of interest included on the contractor code of ethics form.

Monitoring

The OJP Financial Guide requires the Boys and Girls Clubs to establish written policies on subrecipient monitoring and to develop systems, policies, and procedures to ensure that subrecipient activities are properly conducted. The OJP Procurement Guide requires the Boys and Girls Clubs to monitor cost reimbursement contracts to avoid unneeded cost over-runs.

The Boys and Girls Clubs met the requirements for having a written plan for monitoring contractors. We reviewed contracts with FirstPic, Inc., Metcalf Davis, and Contractor One and found they included language stating how the Boys and Girls Clubs planned to monitor the contractors. We tested a judgmental selection of the Boys and Girls Clubs methods of monitoring as stated in each of these contracts. We determined the Boys and Girls Clubs reviewed invoices submitted by contractors and obtained periodic reports to confirm the contractors' work performed. We also determined that Metcalf Davis and Contractor One passed their most recent Certified Public Accounting peer reviews.

We asked the Boys and Girls Clubs staff if they performed onsite-monitoring visits as part of their monitoring efforts. The Boys and Girls Clubs staff told us that they did not historically perform onsite-monitoring visits for their contractors. However, during our audit, the Boys and Girls Clubs hired Metcalf Davis to assist with onsite monitoring of FirstPic, Inc.'s contract-related activities under Grant Numbers 2011-MU-MU-0009 and 2012-JU-FX-0006. Metcalf Davis reviewed the FirstPic, Inc. billings for those two grants and reported FirstPic, Inc. included a 6-percent overcharge for other direct costs in their invoices billed to the Boys and Girls Clubs. We discuss the details of the 6-percent overcharge in the Billing and Payment section of this report and include a recommendation for OJP to remedy the related questioned costs.

Contract Performance

Contractors are required to develop a statement of work listing essential requirements to accomplish the contract. The statement of work should be detailed and, at minimum, list tasks to satisfy the contract requirement according to the OJP Financial Guide.

FirstPic, Inc.

The Boys and Girls Clubs selected FirstPic, Inc. to perform duties that varied from contract to contract. According to the statements of work, those duties included development and administration of mentoring programs; development of community involvement and support strategies; and training, planning, and reporting of site maintenance. We tested the accomplishment of certain tasks performed by FirstPic, Inc. by reviewing their quarterly progress reports and comparing those progress reports to supporting documentation.

Based on our review of written quarterly progress reports, it appears FirstPic, Inc. completed the contractual services we tested. The Boys and Girls Clubs paid FirstPic, Inc. $1,959,807 of $2,570,970 in contract obligations. Each of the contracts with FirstPic, Inc. were described as a fees paid not to exceed contract providing for payment up to a set maximum amount based upon satisfactory contract delivery. The Boys and Girls Clubs staff issued a *Certificate of Completion* to FirstPic, Inc. to certify all terms, conditions, and specifications of each contract were met. However, in the Billing and Payment section of this report below, we question costs for services performed by other parties hired by FirstPic, Inc.

Metcalf Davis and Contractor One

We reviewed individual site visit reports and annual summary reports prepared by these contractors. These contractors agreed to assist the Boys and Girls Clubs by monitoring local subrecipient clubs. The summary reports prepared for Grant Numbers 2011-MU-MU-0009 and 2012-JU-FX-0006 for onsite monitoring visits were supported by individual site reports. We compared the budgeted number of site visits to the actual number of site visits invoiced and reported.[13] Metcalf Davis and Contractor One received payments totaling $616,958 for 205 site visits although the contracts were anticipated to provide $555,500 for 199 onsite monitoring visits. The Boys and Girls Clubs officials told us they incurred more costs because the fees were negotiated at a rate per site plus actual travel costs. We determined the budgets approved by OJP were calculated based on a fixed rate for onsite monitoring services per local club and did not include an estimate for travel costs.

Billing and Payment

We found that the Boys and Girls Clubs did not require the contractors, FirstPic, Inc., Metcalf Davis, Contractor One, or KPMG to submit supporting documents for each line item invoiced for services. At our request, the Boys and Girls Clubs obtained supporting documents from the contractors for billed services we sampled for testing. We then examined whether the Boys and Girls Clubs paid the contractors for allowable costs and if the contractors received the payments.

We tested all expenditures billed by FirstPic, Inc., Metcalf Davis, and Contractor One under Grant Numbers 2011-MU-MU-0009 and 2012-JU-FX-0006. We subsequently expanded our testing to include a selection of expenditures under the other six grants when we identified unsupported costs that were routinely charged to the grants by FirstPic, Inc. For the KPMG billing and payments, we reviewed the fees charged for conducting the OMB A-133 audits. According to 2

[13] Under Grant Number 2012-JU-FX-0006, the contract document did not specify the number or name of the local clubs that the Boys and Girls Clubs intended for Metcalf Davis and Contractor One to monitor.

C.F.R. Part 230, these fees were allowable.[14] We identified unsupported costs of $75,188 and unallowable costs of $827 for the billing and payments reviewed by FirstPic, Inc. and Metcalf Davis.[15] We also identified one instance of double billing and payment to FirstPic, Inc. The results of our testing of the billings and payments for each contractor reviewed are discussed below.

FirstPic, Inc.

We questioned as unsupported a total of $74,780 in payments received by FirstPic, Inc., as described below.

Six-Percent Overcharge – According to a September 2013 monitoring report submitted by Metcalf Davis, FirstPic, Inc. billed and received payment for expenditures 6 percent above their third party billings.[16] We asked the Boys and Girls Clubs staff about the overages in the billings and informed them that we were not able to find support that allowed the 6-percent overcharge for other direct costs. The Boys and Girls Clubs officials did not initially provide an explanation for the additional 6-percent charge and later provided a written response from FirstPic, Inc.

In its response, FirstPic, Inc. stated that a Boys and Girls Clubs employee told them to add the 6-percent additional charge to direct costs several years ago; however, we could not confirm this statement because the Boys and Girls Clubs employee was no longer with the Boys and Girls Clubs at the time of our audit. The 6 percent was applied to all invoices except for the tribal youth mentoring program grants. We identified all other direct costs itemized under the national mentoring program grants and estimated unsupported costs totaling $3,036 resulting from the 6-percent overcharge.[17] FirstPic, Inc. further stated that some invoices included the 6-percent charge and others did not because of billing oversight, in that the FirstPic, Inc. employee who handled the billing missed adding the 6-percent charge to some of the other direct costs that were invoiced.

Professional Fees – The Boys and Girls Clubs selected FirstPic, Inc. as a sole source provider for professional services, which means the services were to be

[14] 2 C.F.R. Part 230 states that the costs of audits required by, and performed in accordance with, the Single Audit Act, as implemented by Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations'' are allowable.

[15] The deficiencies described in this section are additional reasons for questioning the identified costs, which were also questioned, along with the entire contract amounts for FirstPic, Inc., Metcalf Davis, and Contractor One, in the Analysis of Justifications for Sole Source Contracts section.

[16] The monitoring report submitted by Metcalf Davis assessed FirstPic, Inc.'s compliance with Grant Numbers 2011-MU-MU-0009 and 2012-JU-FX-0006. Metcalf Davis reported that for each cost item tested such as mileage and conference costs, the amounts reimbursed were 6 percent above the costs verified through its review of supporting documents.

[17] We estimated the overcharge for all of the national mentoring grants listed in Table 1 by applying the 6 percent to the total of other direct costs listed on the service invoices except where we were able to determine the payment matched the actual invoice for professional fees.

performed by this contractor only. However, a FirstPic, Inc. official told us that they did not have the available staff to complete all contracted services and contracted with other vendors to complete certain contract tasks. As discussed in our sole source analysis section of this report, the absence of sufficient justification for sole source contracting is reflected when others can and do perform the contracted work, but the fee is not based on free and fair competition. We questioned professional fees totaling $66,287 paid to FirstPic, Inc.

Double Billing and Payment – FirstPic, Inc. was reimbursed twice for one invoice that was billed twice for professional fees. We asked about the second payment. FirstPic, Inc. staff told us that the second payment was billed in error after having been requested in a previous month. We questioned the second payment of $827 received as an unallowable cost.

Expenditures – We tested expenditures totaling $562,393 for Grant Numbers 2011-MU-MU-0009 and 2012-JU-FX-0006. We requested that the Boys and Girls Clubs provide additional supporting documentation for $109,075 of the $562,393. The Boys and Girls Clubs provided a response prepared by FirstPic, Inc. for the $109,075. In its response, FirstPic, Inc. agreed that $1,275 of the $109,075 was unsupported. After further review of the documents and response provided, we determined that a total of $16,086 of $109,075 remained unsupported. To avoid double counting of questioned costs, in the recommendations at the end of this report, we question $4,630 of the $16,086 as unsupported costs; the remaining $11,456 is questioned on the bases of the 6-percent overcharge, professional fees, and double billing discussed in the previous paragraphs.[18]

General Ledger – For all eight grants, the Boys and Girls Clubs paid FirstPic, Inc. $1,959,807 and that amount is properly reflected in the Boys and Girls Clubs general ledger.

In summary, we recommend that OJP remedy the $73,953 unsupported costs. We also recommend that OJP remedy the $827 in unallowable costs paid to FirstPic, Inc.

Metcalf Davis

We also questioned payments received by Metcalf Davis, totaling $1,235 ($724 plus $511) as unsupported costs.

Expenditures – We tested expenditures totaling $159,932 for Grant Numbers 2011-MU-MU-0009 and 2012-JU-FX-0006. We requested that the Boys and Girls Clubs provide additional supporting documentation for $7,002 of the $159,932. The Boys and Girls Clubs provided a response prepared by Metcalf Davis for the $7,002. After review of the documents and response provided, we determined that $724 in travel costs remained unsupported.

[18] Appendix 2 contains a comprehensive schedule of the questioned costs in this report.

General Ledger and Adjustments – For all eight grants, the Boys and Girls Clubs paid Metcalf Davis $468,202 for contractual services. The general ledger showed this amount; however, the Boys and Girls Clubs reversed a $17,631 payment for monitoring services that were completed under Grant Number 2011-MU-MU-0009, resulting in the net payment of $450,571 reflected in Table 2. We asked the Boys and Girls Clubs officials why the reversal was made for services that were received. Officials told us that the reversal was made because the $17,631 included costs for a local club that was subject to A-133 audit procedures. The officials told us they believed that local clubs that are subject to A-133 audits are not chargeable to the OJP grant. The Boys and Girls Clubs also reversed $2,600 in travel costs for a site visit associated with another local club subject to A-133 audits under Grant Number 2009-SC-B9-K010. However, the Boys and Girls Clubs staff did not reverse all travel costs related to A-133 travel costs incorrectly charged to Grant Number 2009-SC-B9-K010. Specifically, we estimated $511 in travel costs to Tulsa, Oklahoma, was not reversed and considered the costs incurred to be unsupported. We told the Boys and Girls Clubs staff that we noticed the travel costs were not reversed when the flat rate site visit cost was reversed. The Boys and Girls Clubs staff did not provide a response.

In summary, we question $1,235 ($724 plus $511) in payments received by Metcalf Davis as unsupported and recommend that OJP remedy these costs.

Contractor One – We do not question payments received by Contractor One.

Expenditures – We tested expenditures totaling $54,685 for Grant Numbers 2011-MU-MU-0009 and 2012-JU-FX-0006. We determined all expenditures tested were adequately supported.

General Ledger – The Boys and Girls Clubs paid Contractor One $166,387 and that amount is properly reflected in the Boys and Girls Clubs general ledger.

Commingling of Program Grant Funds

According to the OJP Financial Guide, federal regulations do not require physical segregation of cash deposits; however, the accounting systems of all recipients and subrecipients must ensure that agency funds are not commingled with funds from other federal agencies. Recipients must account for each award separately. Recipients and subrecipients are prohibited from commingling funds on either a program-by-program or project-by-project basis. Funds specifically budgeted or received for one project may not be used to support another.

The Boys and Girls Clubs received separate funding for monitoring under the national mentoring program and the tribal youth mentoring program. However, the Boys and Girls Clubs sometimes contracted for services related to these two programs in a single document.

We determined that the Boys and Girls Clubs commingled the funds by charging all costs to Grant Number 2009-SC-B9-K010 (National Mentoring Program) and not charging any costs to Grant Number 2009-TY-FX-0054 (Tribal Youth Mentoring Program) for the onsite monitoring of local clubs.

For example, the Boys and Girls Clubs contracted with Metcalf Davis and Contractor One to complete a total of 48 site visits (40 for the national mentoring and 8 for the tribal youth mentoring grants) at a cost of $144,000. Instead, the contractors were paid a total of $153,851 for 48 site visits. A Boys and Girls Clubs official told us they incurred more costs because the fees were negotiated at a rate per site plus actual travel costs.[19] We determined that the Boys and Girls Clubs commingled the grant funds by paying $153,851 for the 48-onsite monitoring visits from Grant Number 2009-SC-B9-K010 instead of allocating the costs to both grants. Funds specifically budgeted or received for one project may not be used to support another. With regard to the site visit contract, the fact that funds were used from one grant for expenditures incurred under another grant amounts to a commingling issue.

The Boys and Girls Clubs completed one contract with Metcalf Davis and Contractor One for onsite monitoring of local clubs under Grant Numbers 2010-JU-FX-0004 and 2010-TY-FX-0014. The contract required Metcalf Davis and Contractor One to complete 47 site visits (42 for the national mentoring and 5 for the tribal youth). The invoice and general ledgers show the contractors charged and were paid $139,731 for 47 site visits.

We determined that the Boys and Girls Clubs commingled the funds by not reversing the travel costs related to the onsite monitoring visits to 3 of the 47 local clubs. The Boys and Girls Clubs staff told us it incorrectly charged the flat rate per visit totaling $7,950 to the Grant Number 2010-JU-FX-0004 and reversed the costs to correctly show the charges to the Grant Number 2010-TY-FX-0014. Therefore, we estimated that the general ledger should also show corrected journal entries of about $1,179 in related travel costs to the three local clubs.

We recommend the Boys and Girls Clubs not commingle grant funds designated for separate programs and correct their financial records to properly show whether the expenditures were incurred for the National Mentoring or Tribal Youth Mentoring Program.

Conclusion

We found deficiencies in the Boys and Girls Clubs' exclusive use of sole source contracts. The Boys and Girls Clubs' documentation did not adequately establish that it met the sole source criteria for most of the contracts we reviewed. We question $2,962,932 for contracts awarded on a sole source basis without

[19] We determined the contract budget approved by OJP for subrecipient monitoring services did not specify if the rate per site visit included an estimate for travel costs.

proper justification, and we consider these costs to be unsupported costs. The Boys and Girls Clubs hired lobbyists to help obtain the federal funding awarded by OJP to provide services through the national and tribal youth mentoring programs. However, the Boys and Girls Clubs and one contractor did not properly report all lobbyists and lobbying activities as required. We tested the Boys and Girls Clubs payments under grant-funded contracts and we question $75,188 in payments as unsupported, as well as one $827 payment as unallowable. We also found that a Boys and Girls Clubs contractor did not uniformly comply with OJP requirements concerning the establishment of an employee code of conduct, and that the Boys and Girls Clubs commingled grant funds.

Recommendations

We recommend that OJP:

1. Remedy the $505,148 in unsupported costs due to the absence of justification in the selection of contracts on a sole source basis.
2. Remedy the $2,457,784 in unsupported costs due to inadequate justification in the selection of contractors on a sole source basis.
3. Ensure that the Boys and Girls Clubs implement procedures for conducting procurements that comply with the rules governing sole source awards; provide for open, free, and fair competition; and adequately document the procurement process, including market research, cost and price analyses, and the justification for any sole source award.
4. Ensure the Boys and Girls Clubs complies with the OJP Financial Guide requirement for explicit lobbying certification from contractors that grant funds have not and will not be used for lobbying activity.
5. Ensure that the Boys and Girls Clubs and its contractors comply with the requirements of the OJP Financial Guide regarding the proper filing of the lobbying disclosure form.
6. Ensure that the Boys and Girls Clubs verifies that all contractors use a written code of conduct document with language that specifically addresses all of the requirements provided in the OJP Procurement Guide.
7. Ensure that the Boys and Girls Clubs' staff completes a code of ethics certificate and disclosure statement form during the procurement process for all contracts.
8. Ensure that the Boys and Girls Clubs contractors include a dated signature and answer all questions for conflicts of interest included on the contractor code of ethics form.

9. Remedy the $76,015 in unsupported and unallowable costs charged to the national and tribal youth mentoring programs related to the billing and payment issues as follows.

    a. Remedy the $66,287 in unsupported costs regarding vendors hired by FirstPic, Inc. to complete contract service tasks in which the Boys and Girls Clubs identified FirstPic, Inc. as a sole source provider for those tasks.

    b. Remedy the $4,630 in unsupported costs regarding the remaining other direct costs in which FirstPic, Inc. did not provide sufficient support for the costs billed and paid.

    c. Remedy the $3,036 in unsupported costs regarding the 6-percent overcharge that FirstPic, Inc. made to other direct costs under the National Mentoring Program awards.

    d. Remedy the $724 in unsupported expenditures billed by and paid to Metcalf Davis.

    e. Remedy the $827 in unallowable costs for the double payment of an invoice to FirstPic, Inc.

    f. Remedy the estimated $511 in unsupported travel costs that was incurred for the site visit to Tulsa, Oklahoma, by Metcalf Davis in which the Boys and Girls Clubs reversed only the flat rate for monitoring a local club.

10. Ensure that the Boys and Girls Clubs implements procedures to avoid paying duplicate billings.

11. Ensure that the Boys and Girls Clubs does not commingle grant funds designated for separate programs and corrects its financial records to properly show whether the expenditures were incurred for the National Mentoring Program or Tribal Youth Mentoring Program.

APPENDIX 1

OBJECTIVE, SCOPE, AND METHODOLOGY

Objective

The objective of our audit was to assess the performance of the Boys and Girls Clubs in the areas of management pertaining to contracts it entered into that were funded with OJP grant funds. We reviewed the following OJP grants: 2012-JU-FX-0006, 2011-MU-MU-0009, 2010-TY-FX-0014, 2010-JU-FX-0004, 2009-TY-FX-0054, 2009-SC-B9-K010, 2008-TY-FX-0006, and 2008-JU-FX-K010. Those areas included: (1) contract process, (2) sole source justifications, (3) suspension and debarment, (4) lobbying, (5) code of conduct, (6) monitoring of contractors, (7) contract performance, (8) document retention, and (9) billing and payment as related to federal funding subawarded as a contract by the Boys and Girls Clubs for national and tribal mentoring of youth.[20]

Scope and Methodology

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

Unless otherwise specified, our audit covered, but was not limited to activities that occurred between the start of the grant period for OJP's grants 2012-JU-FX-0006, 2011-MU-MU-0009, 2010-TY-FX-0014, 2010-JU-FX-0004, 2009-TY-FX-0054, 2009-SC-B9-K010, 2008-TY-FX-0006, and 2008-JU-FX-K010 from July 1, 2008, through September 30, 2013. Further, we tested compliance with what we considered to be the most important conditions of the grants. Unless otherwise stated in our report, the criteria we audited against are identified in the OJP Financial Guide, OJP Guide to Procurement Procedures for Recipients of Department of Justice Grants and Cooperative Agreements, and Boys and Girls Clubs' Vendor Contract Policy. The evidence we analyzed and its significance within the context of our audit objective are disclosed in the Findings and Recommendations section of this report. There were no significant constraints or scope impairments for this audit.

[20] We used OpenSecrets.org to help us determine if any lobbying reports were missing from OJP's Grant Management System. OpenSecrets.org is an independent website operated by the Center for Responsive Politics that publishes the lobbying information from the quarterly report filed by lobbyists to the Senate's Office of Public Records.

We did not test the internal controls or the financial management system for the Boys and Girls Clubs of America as a whole. An Independent Certified Public Accountant conducted an audit of the Boys and Girls Clubs of America, Inc.'s financial statements for the years ending 2008, 2009, 2010, 2011, and 2012. The Single Audit Reports were prepared under the provisions of OMB Circular A-133. We reviewed the independent auditor's assessment to identify internal control weaknesses and significant noncompliance issues related to the grants and assessed the risks of those findings on our audit. Further, we reviewed certain internal control policies and procedures that were significant within the context of our objective, which the Boys and Girls Clubs had in place during the grant period. Specifically, we reviewed grant-related procedures in place for drawdowns, federal financial reports, progress reports, procurement, subrecipient monitoring, and contractor monitoring.

In conducting our audit, we performed sample-based testing for expenditures, and progress reports. In this effort, we employed a judgmental sampling design to obtain broad exposure to numerous facets of the awards reviewed, such as unique expenditure adjustments throughout the award periods, July 1, 2008, through September 30, 2013. This non-statistical sample design did not allow projection of the test results to the universe from which the samples were selected.

APPENDIX 2

SCHEDULE OF DOLLAR-RELATED FINDINGS

DESCRIPTION	AMOUNT	PAGE
Questioned Costs[21]		
Unsupported Costs No Sole Source Justifications	$ 505,148	8
Unsupported Costs Inadequate Sole Source Justifications	$2,457,784	9
Unsupported Costs 6-Percent Overcharge	$3,036	21
Unsupported Costs Professional Fees	$66,287	22
Unsupported Costs Sample Expenditures	$4,630	22
Unallowable Costs Double Billing and Payment	$827	22
Unsupported Costs Sample Expenditures	$724	22
Unsupported Costs Unadjusted Travel Expenditures	$511	22
Gross Questioned Costs	**$3,038,947**	
Less Duplicate Questioned Costs		
Unsupported Costs Professional Fees	$(66,287)	
Unsupported Costs 6-Percent Overcharge	$(3,036)	
Unsupported Costs Sample Expenditures	$(4,630)	
Unallowable Costs Double Billing and Payment	$(827)	
Unsupported Costs Sample Expenditures	$(724)	
Unsupported Costs Unadjusted Travel Expenditures	$(511)	
Net Questioned Costs	**$2,962,932**	

[21] 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; are unnecessary or unreasonable. Questioned costs may be remedied by offset, waiver, recovery of funds, or the provision of supporting documentation.

APPENDIX 3

LIST OF CONTRACTS SUBAWARDED BY BOYS AND GIRLS CLUBS

OIG NUMBER	OJP AWARD NUMBER	CONTRACTOR	NON-COMPETITIVE / SOLE SOURCE	CONTRACT TYPE	APPROVED BUDGET AMOUNT	EXPENDED AMOUNT
1	**2008-JU-FX-K010**	FIRSTPIC, INC.	SOLE SOURCE	Fees paid not to exceed contract. Based upon satisfactory contract delivery.	$745,000.00	$404,304.10
1	**2008-JU-FX-K010**	CONTRACTOR THREE	SOLE SOURCE	Firm Fixed Price	$0.00	$1,800.00
1	**2008-JU-FX-K010**	CONTRACTOR ONE	SOLE SOURCE	Firm Fixed Price for Professional Services	$25,000.00	$31,772.61
1	**2008-JU-FX-K010**	KPMG, LLP	SOLE SOURCE	Fixed Price with Escalation	$43,000.00	$43,000.00
1	**2008-JU-FX-K010**	CONTRACTOR NINE	SOLE SOURCE	Firm Fixed Price	$5,000.00	$5,000.00
1	**2008-JU-FX-K010**	METCALF DAVIS, CPAs	SOLE SOURCE	Firm Fixed Price for Professional Services	$50,000.00	$94,620.35
1	**2008-JU-FX-K010**	CONTRACTOR TWO	SOLE SOURCE	Firm Fixed Price	$55,000.00	$54,988.75
2	**2008-TY-FX-0006**	FIRSTPIC, INC.	SOLE SOURCE	Fees paid not to exceed contract. Based upon satisfactory contract delivery.	$150,000.00	$121,533.74
3	**2009-SC-B9-K010**	FIRSTPIC, INC.	SOLE SOURCE	Fees paid not to exceed contract. Based upon satisfactory contract delivery.	$425,000.00	$375,625.32
3	**2009-SC-B9-K010**	CONTRACTOR THREE	SOLE SOURCE	Firm Fixed Price	$0.00	$30,000.00
3	**2009-SC-B9-K010**	CONTRACTOR ONE	SOLE SOURCE	Firm Fixed Price for Professional Services	$39,000.00	$38,752.57
3	**2009-SC-B9-K010**	KPMG, LLP	SOLE SOURCE	Fixed Price with Escalation	$25,000.00	$46,563.76
3	**2009-SC-B9-K010**	METCALF DAVIS, CPAs	SOLE SOURCE	Firm Fixed Price for Professional Services	$81,000.00	$115,098.52
3	**2009-SC-B9-K010**	CONTRACTOR TWO	SOLE SOURCE	Firm Fixed Price	$65,000.00	$36,055.00
4	**2009-TY-FX-0054**	FIRSTPIC, INC.	SOLE SOURCE	Fees paid not to exceed contract. Based upon satisfactory contract delivery.	$95,000.00	$95,000.00
4	**2009-TY-FX-0054**	CONTRACTOR ONE	SOLE SOURCE	Firm Fixed Price for Professional Services	$9,000.00	$0.00
4	**2009-TY-FX-0054**	KPMG, LLP	SOLE SOURCE	Fixed Price with Escalation	$5,000.00	$1,936.24
4	**2009-TY-FX-0054**	METCALF DAVIS, CPAs	SOLE SOURCE	Firm Fixed Price for Professional Services	$15,000.00	$0.00

OIG NUMBER	OJP AWARD NUMBER	CONTRACTOR	NON-COMPETITIVE / SOLE SOURCE	CONTRACT TYPE	APPROVED BUDGET AMOUNT	EXPENDED AMOUNT
5	**2010-JU-FX-0004**	BOYS & GIRLS CLUBS OF CENTRAL FLORIDA	NON COMPETITIVE	Firm Fixed Price	$2,000.00	$2,000.00
5	**2010-JU-FX-0004**	CONTRACTOR TEN	NON COMPETITIVE	Firm Fixed Price	$800.00	$775.75
5	**2010-JU-FX-0004**	CONTRACTOR TEN	NON COMPETITIVE	Firm Fixed Price	$0.00	$11,965.10
5	**2010-JU-FX-0004**	FIRSTPIC, INC.	SOLE SOURCE	Fees paid not to exceed contract. Based upon satisfactory contract delivery.	$425,970.00	$315,951.56
5	**2010-JU-FX-0004**	CONTRACTOR THREE	SOLE SOURCE	Firm Fixed Price	$75,000.00	$75,000.00
5	**2010-JU-FX-0004**	CONTRACTOR EIGHT	NON COMPETITIVE	Firm Fixed Price	$5,000.00	$5,000.00
5	**2010-JU-FX-0004**	CONTRACTOR ONE	SOLE SOURCE	Firm Fixed Price for Professional Services	$37,500.00	$41,176.36
5	**2010-JU-FX-0004**	KPMG, LLP	SOLE SOURCE	Fixed Price with Escalation	$43,000.00	$43,000.00
5	**2010-JU-FX-0004**	METCALF DAVIS, CPAs	SOLE SOURCE	Firm Fixed Price for Professional Services	$75,000.00	$90,601.73
5	**2010-JU-FX-0004**	CONTRACTOR FIVE	NON COMPETITIVE	Firm Fixed Price	$35,000.00	$29,093.92
5	**2010-JU-FX-0004**	CONTRACTOR TWO	SOLE SOURCE	Firm Fixed Price	$30,000.00	$30,000.00
5	**2010-JU-FX-0004**	CONTRACTOR SEVEN	NON COMPETITIVE	Firm Fixed Price	$10,000.00	$9,000.00
6	**2010-TY-FX-0014**	FIRSTPIC, INC.	SOLE SOURCE	Fees paid not to exceed contract. Based upon satisfactory contract delivery.	$95,000.00	$84,999.39
6	**2010-TY-FX-0014**	CONTRACTOR ONE	SOLE SOURCE	Firm Fixed Price for Professional Services	$7,500.00	$0.00
6	**2010-TY-FX-0014**	KPMG, LLP	SOLE SOURCE	Fixed Price with Escalation	$1,000.00	$1,000.00
6	**2010-TY-FX-0014**	METCALF DAVIS, CPAs	SOLE SOURCE	Firm Fixed Price for Professional Services	$12,500.00	$7,950.00

OIG NUMBER	OJP AWARD NUMBER	CONTRACTOR	NON-COMPETITIVE / SOLE SOURCE	CONTRACT TYPE	APPROVED BUDGET AMOUNT	EXPENDED AMOUNT
7	**2011-MU-MU-0009**	CONTRACTOR SIX	NON COMPETITIVE	Firm Fixed Price	$15,000.00	$11,500.00
7	**2011-MU-MU-0009**	FIRSTPIC, INC.	SOLE SOURCE	Fees paid not to exceed contract. Based upon satisfactory contract delivery.	$410,000.00	$409,989.13
7	**2011-MU-MU-0009**	CONTRACTOR ONE	SOLE SOURCE	Firm Fixed Price for Professional Services	$45,000.00	$38,116.17
7	**2011-MU-MU-0009**	KPMG, LLP	SOLE SOURCE	Fixed Price with Escalation	$43,000.00	$43,000.00
7	**2011-MU-MU-0009**	METCALF DAVIS, CPAs	SOLE SOURCE	Firm Fixed Price for Professional Services	$90,000.00	$90,033.55
7	**2011-MU-MU-0009**	CONTRACTOR FOUR	NON COMPETITIVE	Firm Fixed Price	$60,000.00	$54,987.76
7	**2011-MU-MU-0009**	TBD (audio visual & hosting charges for military teen ambassador training)	N/A	Not Awarded	$2,500.00	$0.00
7	**2011-MU-MU-0009**	TBD (enhancements to grant management system)	N/A	Not Awarded	$5,000.00	$0.00
8	**2012-JU-FX-0006**	KPMG, LLP	SOLE SOURCE	Fixed Price with Escalation	$41,000.00	$44,845.65
8	**2012-JU-FX-0006**	METCALF DAVIS, CPAs	SOLE SOURCE	Firm Fixed Price for Professional Services	$45,000.00	$52,267.48
8	**2012-JU-FX-0006**	CONTRACTOR ONE	SOLE SOURCE	Firm Fixed Price for Professional Services	$24,000.00	$16,569.25
8	**2012-JU-FX-0006**	TBD - CONTRACTOR THREE	SOLE SOURCE	Firm Fixed Price	$30,000.00	$29,000.00
8	**2012-JU-FX-0006**	FIRSTPIC, INC.	SOLE SOURCE	Fees paid not to exceed contract. Based upon satisfactory contract delivery.	$225,000.00	$152,403.87
					$3,722,770.00	**$3,186,277.63**

Source: OIG Analysis

APPENDIX 4

CRITERIA FOR SOLE SOURCE JUSTIFICATIONS

Unless otherwise stated in our report, the criteria we audited against are identified in the OJP Financial Guide, OJP Guide to Procurement Procedures for Recipients of Department of Justice Grants and Cooperative Agreements, and the Boys and Girls Clubs' Vendor Contract Policy as summarized below.

Title 28 C.F.R. Parts 70.41 through 70.48 provide procurement standards for grants with non-profit organizations. Part 70.43 requires that "all procurement transactions must be conducted in a manner to provide to the maximum extent practical, open and free competition." The C.F.R. further states that "contractors that develop or draft specifications, requirements, statements of work, invitations for bids or requests for proposals must be excluded from competing for such procurements." Part 70.45 requires that "some form of cost or price analysis must be made and documented in the procurement files in connection with every procurement action." The C.F.R. defines cost analysis as "the review and evaluation of each element of cost to determine reasonableness, allocability, and allowability."

The OJP Financial Guide serves as a primary reference manual to assist award recipients in fulfilling their fiduciary responsibility to safeguard grant funds and ensure funds are used for the purposes for which they were awarded. The guide requires non-profit award recipients to use procurement procedures that conform to the standards identified in the Procurement Standards sections of 28 C.F.R. Part 70. The guide also provides reference to procurement standards. The scope of this audit covers the period of four OJP Financial Guides and one OJP Guide to Procurement Procedures for Recipients of Department of Justice Grants and Cooperative Agreements. The applicable guidance related to procurement, competition, and the use of sole source procedures provided under each of the guides is detailed below:

1. The 2008 OJP Financial Guide requires that "all procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner so as to provide maximum open, free, and fair competition." The guide also requires that "contractors involved in developing or drafting specifications, requirements, statements of work, or requests for proposals for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement." The guide states that "with the exception of a few justified sole source situations, contracts are awarded via competitive processes." The guide allows for the use of a sole source award if the applicant can document that only one contractor is qualified or available to perform the function. The provisions requiring competition in procurement remain unchanged in the 2009 OJP Financial Guide. Six of the eight grants under the audit were awarded under the provisions of the 2008 and 2009 guidance.

2. The 2011 OJP Financial Guide, provides guidance for Procurement Under Awards of Federal Assistance and require that all procurement transactions be conducted in an open, free, and fair competition, whether purchasing transactions are negotiated or competitively bid, and without regard to dollar value. The 2011 guide clarified the circumstances under which sole source procurement may be used. Specifically, the guide allows for sole source procurement when the applicant can document:

    - the item or service is available only from a single source;
    - a true public exigency or emergency exists; or
    - after competitive solicitation, competition is considered inadequate.

    The 2011 OJP Financial Guide further provides an example of the information that would be needed to support the documentation requirements, including: (1) an outline of the unique qualities of the contractor; (2) an explanation of why it was necessary to contract non-competitively; and (3) a statement of financial impact if the contract coverage is not complete by a certain date. However, the Guide also states that "time constraints will not be considered a factor if the award recipient has not sought competitive bids in a timely manner."

3. The 2012 OJP Financial Guide provisions requiring competition in procurement remained the same as stated in the 2011 OJP Financial Guide.

4. The 2011 OJP Guide to Procurement Procedures for Recipients of Department of Justice Grants and Cooperative Agreements requires that "all procurement transactions must be conducted in a manner to provide, to the maximum extent practical, open and free competition." The guide also states that "Grantees may make the initial determination that competition is not feasible if one of the following circumstances exists:

    - the item of service is available only from a single source.
    - the public exigency or emergency for the requirement will not permit a delay resulting from a competitive solicitation.
    - after solicitation of a number of sources, competition is considered inadequate.

    The guide also requires grantees to "perform a cost or price analysis in connection with every procurement action including contract modifications." Additionally, the guide provides that, "In any event, documentation reflecting actions taken and the position of the grantee are extremely important in order to establish an audit trail."

The Boys and Girls Clubs' Vendor Contract Policy provides that a competitive bidding analysis is required for all contracts that will exceed $15,000. This is accomplished by soliciting at least three bids through a Request for Proposal (RFP). The policy allows for the use of sole source procurement in the unusual event that an RFP is inappropriate. However, the policy provides that a sole source justification should only be used when absolutely necessary.

APPENDIX 5

OFFICE OF JUSTICE PROGRAMS RESPONSE TO THE DRAFT REPORT

U.S. Department of Justice

Office of Justice Programs

Office of Audit, Assessment, and Management

Washington, D.C. 20531

SEP 12 2016

MEMORANDUM TO: Ferris B. Polk
Regional Audit Manager
Atlanta Regional Audit Office
Office of the Inspector General

FROM: Ralph E. Martin
Director

SUBJECT: Response to the Draft Audit Report, *Audit of Contracts Awarded by the Boys and Girls Clubs of America, Inc., Using Office of Justice Programs Grant Funds*

This memorandum is in reference to your correspondence, dated April 4, 2016, transmitting the above-referenced draft audit report for the Boys and Girls Clubs of America, Inc. (BGCA). We consider the subject report resolved and request written acceptance of this action from your office.

The Office of Justice Programs (OJP) appreciates the opportunity to review and comment on the draft audit report. Mentoring at-risk youth is a top priority for OJP. The National Mentoring Program, administered by OJP's Office of Juvenile Justice and Delinquency Prevention (OJJDP), helps to support the positive development of youth. Research confirms that mentoring improves self-esteem, academic achievement, positive peer relationships, and reduces drug use, aggression, depressive symptoms, and delinquent acts. BGCA has a long history of providing mentoring to our nation's most vulnerable youth through the use of OJJDP mentoring funds.

At the outset, we want to identify several factual concerns related to BGCA's response, which are critical to any eventual resolution and closure of the audit report recommendations.

First, BGCA appears to have a misunderstanding as to record retention requirements applicable to grantees under 28 C.F.R. Part 70. The requirements in 28 C.F.R. § 70.44 required BGCA to establish and follow its own written procurement policies and procedures.[1] There is evidence

[1] As an aside, we note that BGCA applied for funding as a private non-profit organization. As such, although there has been discussion of the regulatory provisions at 28 C.F.R. Part 66, those provisions are inapplicable to this case, since they are limited in scope and apply to State and Local Governments (including Indian Tribes). The appropriate administrative requirements which all non-profit organizations had to follow at all times relevant to this audit were those regulations found in 28 C.F.R. Part 70.

that BGCA had in fact created these policies and procedures, since we know of such a policy dated January 2007 and January 2013, and a current policy, dated October 2013, with updates made in May 2015, April 2016, and May 2016, which was included under Tab 15 in BGCA's response to the above-referenced draft audit report. The content of these policies is critical to this discussion since 28 C.F.R. § 70.53 required BGCA to maintain financial records (which would include procurement records) as part of its grant files to demonstrate compliance with its own written procurement policies and procedures, to include supporting documentation to justify its sole-source awards.[2] Specifically, 28 C.F.R. § 70.53(b) states, "[f]inancial records, supporting documents, statistical records, and all other records pertinent to an award must be retained for a period of three years from the date of submission of the final expenditure report...."

BGCA's procurement policies appear to include requirements for sole source justifications as established by its written procurement procedures; therefore, such files should have been maintained in BGCA grant files for a period of not less than three years following submission of the final financial accounting (i.e., the final Federal Financial Report (FFR)) for each particular grant. *Id.* A quick review of OJP files for the eight grants reviewed by the OIG under this audit, indicates that based on the submission dates of the final FFRs, the 3-year record retention rate for each of those grants would have expired after the November 27, 2012 audit initiation date. It is important to also understand that once BGCA had received the notice concerning the OIG audit, no records concerning those grants should have been destroyed. *See* 28 CFR §70.53(b). Consequently, BGCA, therefore, should have been able to produce records as part of its grant files, consistent with requirements under 28 C.F.R. §§ 70.44 and 70.53, to show adherence to its own written procurement policies and to justify any sole source procurements made during this time period.

Second, the issue of contract requirements was specifically identified by OJP's Office of the Chief Financial Officer (OCFO) financial monitoring team and discussed with BGCA six years prior to the OIG audit. Of importance to this discussion is the salient fact, not mentioned by either BGCA or the OIG, that in 2010, the OCFO conducted an on-site financial monitoring visit to BGCA, and specifically identified two contracts in excess of the simplified acquisition threshold for which sole source justifications had not been submitted to OJP for prior approval. *See* 2010 OCFO site visit report, which is available in OJP's Grants Management System (GMS). In Recommendation Number 1 in that 2010 site visit report, the OCFO directed BGCA to review the OJP Financial Guide for the proper process for seeking OJP approval of sole source awards above the simplified acquisition threshold. At that time, BGCA

[2] It should be noted that the adoption of new Office of Management and Budget (OMB) regulations at 2 C.F.R. Part 200 (Uniform Requirements), effective December 26, 2014, provided new guidance relevant to the question of sole source procurement contracts. Under the Uniform Requirements, it is now very clear, for example, that simply because an instrument is identified by a grantee as a contract, that is not determinative as to whether that instrument will ultimately be considered to be a procurement contract subject to sole source justifications and OJP approval (if over the simplified acquisition threshold), or a subaward, which is approved via a different process. The Uniform Requirements also clarify that activities related to the actual implementation of a funded project would be considered subawards. The purchase of a good or service, however, which is then used by the grantee to perform aspects of the award would be considered a procurement. Under these distinctions, several of the contracts involved in this audit may have been mischaracterized as procurement contracts. At a minimum, moving forward, these types of contracts may be characterized as subawards, not procurement contracts and, therefore, involve a different set of rules under the Uniform Requirements.

then specifically remedied this recommendation by submitting a sole source justification to OJP for appropriate contracts awarded over the simplified acquisition threshold. Because BGCA submitted for OJP approval a sole source justification for each of the contracts greater than the simplified acquisition threshold identified by the OCFO's financial monitoring team, OCFO subsequently closed the recommendations. *See* 2010 OCFO closure letter, which is also available in GMS.

We think each of the above facts is relevant as OJP works with the OIG and BGCA to remedy the questioned costs in the above-referenced audit report under applicable, current OMB requirements.

The draft report contains 11 recommendations and $2,962,932[3] in net questioned costs. The following is OJP's analysis of the draft audit report recommendations. For ease of review, the recommendations are restated in bold and are followed by OJP's response.

1. **We recommend that OJP remedy the $505,148 in unsupported costs due to the absence of justification in the selection of contracts on a sole source basis.**

   OJP agrees with the recommendation. We will coordinate with BGCA to review the $505,148 in costs questioned as unsupported due to the absence of justification in the selection of contracts on a sole source basis, that were charged to various OJP grants, and to remedy, as appropriate, any such costs determined to be unsupported.

2. **We recommend that OJP remedy the $2,457,784 in unsupported costs due to inadequate justification in the selection of contractors on a sole source basis.**

   OJP agrees with the recommendation. We will coordinate with BGCA to review the $2,457,784 in costs questioned as unsupported due to inadequate justification in the selection of contracts on a sole source basis, that were charged to various OJP grants, and to remedy, as appropriate, any such costs determined to be unsupported.

3. **We recommend that OJP ensure that the Boys and Girls Clubs implement procedures for conducting procurements that comply with the rules governing sole source awards; provide for open, free, and fair competition; and adequately document the procurement process, including market research, cost and price analyses, and the justification for any sole source award.**

   OJP agrees with the recommendation. We will coordinate with BGCA to obtain a copy of written policies and procedures, developed and implemented, for conducting procurements that comply with the rules governing sole source awards; provide for open, free, and fair competition; and adequately document the procurement process, including market research, cost and price analyses, and the justification for any sole source award.

[3] Some costs were questioned for more than one reason. Net questioned costs exclude the duplicate amounts.

4. **We recommend that OJP ensure the Boys and Girls Clubs complies with the OJP Financial Guide[4] requirement for explicit lobbying certification from contractors that grant funds have not and will not be used for lobbying activity.**

   OJP agrees with the recommendation. We will coordinate with BGCA to obtain a copy of written policies and procedures, developed and implemented, requiring that lobbying certifications are obtained from contractors to ensure that grant funds have not and will not be used for lobbying activity.

5. **We recommend that OJP ensure that the Boys and Girls Clubs and its contractors comply with the requirements of the OJP Financial Guide[4] regarding the proper filing of the lobbying disclosure form.**

   OJP agrees with the recommendation. We will coordinate with BGCA to obtain a copy of written policies and procedures, developed and implemented, to ensure that BGCA and its contractors comply with the requirements of the DOJ Financial Guide regarding the proper filing of the lobbying disclosure form.

6. **We recommend that OJP ensure that the Boys and Girls Clubs verifies that all contractors use a written code of conduct document with language that specifically addresses all of the requirements provided in the OJP Procurement Guide[5].**

   OJP agrees with the recommendation. We will coordinate with the BGCA to obtain a copy of written policies and procedures, developed and implemented, to ensure BGCA verifies that all contractors use a written code of conduct document with language that specifically addresses all of the requirements provided in the DOJ Guide to Procurement Procedures.

7. **We recommend that OJP ensure that the Boys and Girls Clubs' staff completes a code of ethics certificate and disclosure statement form during the procurement process for all contracts.**

   OJP agrees with the recommendation. We will coordinate with BGCA to obtain a copy of written policies and procedures, developed and implemented, to ensure BGCA's staff completes a code of ethics certificate and disclosure statement form during the procurement process for all contracts, and the supporting documentation is maintained for future auditing purposes.

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[4] In 2015, the DOJ Financial Guide replaced the OJP Financial Guide, effective for awards made after December 26, 2014.

[5] The DOJ Guide to Procurement Procedures is currently being updated, and will replace the OJP Guide to Procurement Procedures.

8. **We recommend that OJP ensure that the Boys and Girls Clubs contractors include a dated signature and answer all questions for conflicts of interest included on the contractor code of ethics form.**

OJP agrees with the recommendation. We will coordinate with BGCA to obtain a copy of written policies and procedures, developed and implemented, to ensure BGCA's contractors include a dated signature and answer all questions for conflicts of interest included on the contractor code of ethics form, and the supporting documentation is maintained for future auditing purposes.

9. **We recommend that OJP remedy the $76,015 in unsupported and unallowable costs charged to the national and tribal youth mentoring programs related to the billing and payment issues, as follows.**

   a. **Remedy the $66,287 in unsupported costs regarding vendors hired by FirstPic, Inc. to complete contract service tasks in which the Boys and Girls Clubs identified FirstPic, Inc. as a sole source provider for those tasks.**

   b. **Remedy the $4,630 in unsupported costs regarding the remaining other direct costs in which FirstPic, Inc. did not provide sufficient support for the costs billed and paid.**

   c. **Remedy the $3,036 in unsupported costs regarding the 6-percent overcharge that FirstPic, Inc. made to other direct costs under the National Mentoring Program awards.**

   d. **Remedy the $724 in unsupported expenditures billed by and paid to Metcalf Davis.**

   e. **Remedy the $827 in unallowable costs for the double payment of an invoice to FirstPic, Inc.**

   f. **Remedy the estimated $511 in unsupported travel costs that was incurred for the site visit to Tulsa, Oklahoma, by Metcalf Davis in which the Boys and Girls Clubs reversed only the flat rate for monitoring a local club.**

OJP agrees with all sub-parts of this recommendation. We will coordinate with BGCA to review the $76,015 in costs questioned as unsupported and unallowable costs due to billing and payment issues that were charged to the National and Tribal Youth Mentoring Programs, and to remedy, as appropriate, any such costs determined to be unsupported or unallowable.

10. **We recommend that OJP ensure that the Boys and Girls Clubs implements procedures to avoid paying duplicate billings.**

    OJP agrees with the recommendation. We will coordinate with BGCA to obtain a copy of written policies and procedures, developed and implemented, to ensure that proper controls are in place to avoid paying duplicate billings.

11. **We recommend that OJP ensure that the Boys and Girls Clubs does not commingle grant funds designated for separate programs and corrects its financial records to properly show whether the expenditures were incurred for the National Mentoring Program or Tribal Youth Mentoring Program.**

    OJP agrees with the recommendation. We will coordinate with BGCA to obtain a copy of written policies and procedures, developed and implemented, to ensure that grant funds for each DOJ award are accounted for separately, and are not commingled with other non-Federal funds.

Thank you for your continued support and assistance. If you have any questions or require additional information, please contact Jeffery A. Haley, Deputy Director, Audit and Review Division, on (202) 616-2936.

cc: Karol V. Mason
Assistant Attorney General

Beth McGarry
Principal Deputy Assistant Attorney General

Maureen A. Henneberg
Deputy Assistant Attorney General
for Operations and Management

Anna Martinez
Senior Policy Advisor
Office of the Assistant Attorney General

Jeffery A. Haley
Deputy Director, Audit and Review Division
Office of Audit, Assessment, and Management

Robert L. Listenbee
Administrator
Office of Juvenile Justice and Delinquency Prevention

Chryl Jones
Deputy Administrator
Office of Juvenile Justice and Delinquency Prevention

cc: Gregory Thompson
Senior Advisor
Office of Juvenile Justice and Delinquency Prevention

James Antal
Deputy Associate Administrator
Youth Development Prevention and Safety Division
Office of Juvenile Justice and Delinquency Prevention

Amy Callaghan
Special Assistant
Office of Juvenile Justice and Delinquency Prevention

Sharie Cantelon
Grants Management Specialist
Youth Development Prevention and Safety Division
Office of Juvenile Justice and Delinquency Prevention

Charles E. Moses
Deputy General Counsel

Silas V. Darden
Director
Office of Communications

Leigh A. Benda
Chief Financial Officer

Christal McNeil-Wright
Associate Chief Financial Officer
Grants Financial Management Division
Office of the Chief Financial Officer

Joanne M. Suttington
Associate Chief Financial Officer
Finance, Accounting, and Analysis Division
Office of the Chief Financial Officer

Jerry Conty
Assistant Chief Financial Officer
Grants Financial Management Division
Office of the Chief Financial Officer

Alex Rosario
Assistant Chief Financial Officer
Finance, Accounting, and Analysis Division
Office of the Chief Financial Officer

cc: Aida Brumme
Manager, Evaluation and Oversight Branch
Grants Financial Management Division
Office of the Chief Financial Officer

Richard P. Theis
Assistant Director, Audit Liaison Group
Internal Review and Evaluation Office
Justice Management Division

OJP Executive Secretariat
Control Number IT20160412090810

APPENDIX 6

THE BOYS AND GIRLS CLUBS OF AMERICA RESPONSE TO THE DRAFT REPORT

BOYS & GIRLS CLUBS OF AMERICA
RESPONSE TO OFFICE OF INSPECTOR GENERAL
DRAFT AUDIT REPORT OF CONTRACTS AWARDED BY
BOYS & GIRLS CLUBS OF AMERICA
USING OFFICE OF JUSTICE PROGRAMS GRANT FUNDS

BOYS & GIRLS CLUBS OF AMERICA

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BOYS & GIRLS CLUBS OF AMERICA

MEMORANDUM

Date: September 12, 2016

To: Ferris B. Polk, OIG Regional Audit Manager Atlanta Regional Audit Office

From: Paul Sansone, Chief Financial Officer, BGCA

Subject: BGCA RESPONSE TO 4/4/2016 OIG DRAFT AUDIT REPORT

BOYS & GIRLS CLUBS OF AMERICA RESPONSE TO
OFFICE OF INSPECTOR GENERAL DRAFT AUDIT REPORT
OF CONTRACTS AWARDED BY
BOYS & GIRLS CLUBS OF AMERICA
USING OFFICE OF JUSTICE PROGRAMS
GRANT FUNDS

I. INTRODUCTION

Boys & Girls Clubs of America ("BGCA") welcomes the opportunity to respond to the U.S. Department of Justice (DOJ) Office of the Inspector General (OIG) Draft Audit Report dated April 4, 2016 ("Audit Report"). BGCA is a longtime partner with the U.S. Department of Justice, Office of Justice Programs (OJP) in providing much-needed mentoring services to youth throughout this country. BGCA is most grateful for the extensive support provided by OJP over the years, which has helped us pursue our critical mission to reach and serve young people, especially those who need us most. With OJP's help, we have been able to change and save millions of young lives. In turn, the partnership has significant positive impact for the entire nation. A recent independent study of the partnership showed substantial potential savings in taxpayer and private citizen costs resulting from mentoring programs and services at Boys & Girls Clubs.

BGCA fully recognizes and appreciates the responsibility of the OIG and the role it plays in the oversight of the grants awarded by OJP's office of Juvenile Justice and Delinquency Prevention (OJJDP). In fact, BGCA views this process as a unique opportunity to demonstrate our core promise to the nation: to uphold the highest ethical standards, and be responsible stewards of donor and taxpayer dollars. At the same time, BGCA views this as an opportunity to look for ways to continuously improve and strengthen our effectiveness and efficiency. As an organization, we are committed to ongoing and sustained quality improvement.

A. Executive Summary of BGCA Response

As stated above, BGCA appreciates the opportunity to respond to the findings of the OIG's Draft Audit Report dated April 4, 2016. Furthermore, BGCA appreciates the decades of remarkable support received from OJP to help carry out the mission-critical work of developing millions of America's youth into productive citizens of high character. BGCA will respond fully and with documented support to each recommendation but respectfully highlights the following points associated with the draft audit report:

- Consistent with BGCA expectations and its core value of being "impeccable stewards of resources," the comprehensive audit clearly showed no mal-intent, unethical use or misuse of OJP funds.
- In all cases, BGCA followed the OJP Financial Guidelines and obtained appropriate permissions.
- As expected, the comprehensive audit identified no systemic financial management or process concerns. The few financial management concerns raised involved nominal dollars and were not due to overarching issues with systems and controls, and have since been fully addressed through targeted, enhanced and strengthened controls and processes.
- OIG affirmed in many instances BGCA documentation and procurement controls and processes.
- The plain terms of BGCA's proposals submitted to OJP identified and described its major partners in detail – and provided ample documentation to justify sole source awards to BGCA's major partners.
- BGCA's sole source contracts for more than the simplified acquisition threshold were approved and accepted by OJP.
- There is no evidence of any conflicts of interest associated with any vendors selected.
- There is no evidence that utilizing another vendor would have been a better use of federal funds.
- In every instance, BGCA has shown justification and support for the selection of vendors and will continue to do so for all vendors, even for sole source awards for less than the simplified acquisition threshold.
- Subsequent comparative and competitive cost analyses since 2013 fully support BGCA's assertion that vendors selected during this period were of the greatest value and lowest cost for the services rendered.
- While BGCA does not concur with many of the specific findings, BGCA concurs with OIG that all recommendations should be discussed with OJP, and as appropriate addressed to OJP's satisfaction, with the opportunity to further enhance processes for both organizations.
- BGCA concurred fully with four items totaling $5,098 and will remedy these with OJP.
- Since the inception of the audit engagement commencing in 2012, BGCA, in partnership with OJP, instituted enhanced internal controls and processes to further strengthen its procurement and accounting procedures.

B. Legal Support

Throughout the entire three- and one-half-year audit process, BGCA has cooperated fully with OIG, responding in a timely and thorough manner to all inquiries and requests for documentation. To ensure its response was fully transparent and legally appropriate, BGCA retained outside counsel to provide assistance throughout the process. Our counsel has researched the applicable law and, as discussed further below, the law supports that BGCA has not violated any statute, regulation, or contract requirement. Having said that, BGCA will continue to comply with all requests by its longtime partner OJP and work with them to address all matters to their

satisfaction. Please let us know if you or your counsel would like to speak with our attorneys. Following is their contact information:

LATHAM & WATKINS LLP
David R. Hazelton
Kyle R. Jefcoat
555 Eleventh Street NW, Suite 1000
Washington, DC 20004-1304
David.Hazelton@lw.com
Kyle.Jefcoat@lw.com
(202) 637-2200
(202) 637-2201 (fax)

BGCA wants to emphasize that it values its relationship with both OJP and OIG and has already begun to implement steps to bring our process into compliance with OIG's expectations. In short, while we do not concur with all findings expressed in the audit report, we are prepared to work with OJP to make whatever changes are necessary to address your concerns.

Before responding in detail to the specific recommendations set forth on pages 28-29 of the Audit Report, below we wanted to share the legal research done by our counsel regarding some overarching issues and background applicable to our entire response. As explained in section 1 below, BGCA made OJP aware of its use of sole source contracts above the simplified acquisition threshold. Section 2 provides support for the position that, even though BGCA did maintain the sole source documentation and support, according to DOJ's grant regulations, it had no obligation to maintain any documentation supporting sole source awards for less than the simplified acquisition threshold. The final section of the introduction provides some general background regarding BGCA's remarkable history; reviews the scope of these critical grants and shares some impact findings of our federal funding; and outlines BGCA's internal controls related to federal grants management.

1. BGCA's Sole Source Contracts for More Than the Simplified Acquisition Threshold Were Approved and Accepted by OJP

Of the sole source awards listed in Tables 3 and 4 of the Audit Report, only seven were for more than the simplified acquisition threshold.[1] DOJ regulations required pre-approval for sole source awards above the simplified acquisition threshold:

> Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost

[1] All of the contracts on Table 3 were for less than the simplified acquisition threshold and only seven of the twenty-one transactions listed on Table 4 were above the then-applicable simplified acquisition threshold:

Grant Number	Contractor
2008-JU-FX-K010	FirstPic, Inc.
2008-TY-FX-0006	FirstPic, Inc.
2009-SC-B9-K010	Metcalf Davis
2009-SC-B9-K010	FirstPic, Inc.
2010-JU-FX-0004	FirstPic, Inc.
2011-MU-MU-0009	FirstPic, Inc.
2012-JU-FX-0006	FirstPic, Inc.

> estimates, etc. when ... [t]he procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation:

28 C.F.R. § 66.36(g)(2)(ii).

Significantly, for each of the seven sole source procurements that exceeded the simplified acquisition threshold, BGCA pre-cleared the award with OJP and received OJP's approval of the sole source procurement. Each of those seven was included in BGCA's grant proposal to OJP as a named sole source contractor. Moreover, each of those seven contracts was specifically included as a named contractor in BGCA's proposed budget to OJP. In addition, each of those contracts that were for more than the simplified acquisition threshold were specifically submitted to OJP with a request for approval of a sole source award. The steps BGCA took made OJP aware of BGCA's intention to award these seven contracts for more than the simplified acquisition threshold on a sole source basis.

For each of BGCA's major partners, OJP approved the sole source award multiple times. For instance, OJP had seen the grant proposals and knew of BGCA's intention to award contracts on a sole source basis and made the award to BGCA evidencing OJP's approval. Moreover, in each instance OJP approved the proposed budget from BGCA, which clearly set out payments to sole source providers. Indeed, the Audit Report acknowledges that "OJP approved the sole source justifications for the first six FirstPic, Inc. contracts over $100,000."

In each instance, the sole source contract was part of BGCA's offer and OJP's agreement to award the grant, to approve the budget, and/or to authorize the sole source award constituted OJP's acceptance of BGCA's offer. Because there was an offer and acceptance of the specific subcontractor proposed, BGCA feels the procedures of the time were followed with documented approvals and does not concur with the current concern regarding competitive approaches.

As a matter of law, the parties are bound by the terms of a proposal accepted by the Government. See, e.g., Centech Group, Inc. v. United States, 554 F.3d 1029, 1037 (Fed. Cir. 2009) ("To be acceptable, a proposal must represent an offer to provide the exact thing called for in the request for proposals, so that acceptance of the proposal will bind the contractor in accordance with the material terms and conditions of the request."). Further, BGCA submitted offers that OJP accepted without reservation or comment, and the OIG cannot now reasonably assert that BGCA was required to do more than what BGCA stated in its offer. See Seaway Shipping Lines, PSBCA No. 2840, 91-2 B.C.A. (CCH) ¶ 23731 (Jan. 25, 1991) (holding that a contractor's inclusion of "specific language in its proposal" created a "condition of the contract" to which the agency was "bound" because the language "made [the contractor's] offer explicit at the time of the formation of . . . the contract"); Eagle Aviation, Inc. v. United States, 9 Cl. Ct. 128, 131 (1985) (noting that it is the contractor's offer—rather than the government's RFP—that, upon "acceptance . . . by the Postal Service," "create[s] a contract binding on the parties"); see also Restatement (Second) of Contracts §§ 38 & 39 (1981); Bloch Lumber Co., Inc., ASBCA 23512, Nov. 5, 1979, 79-2 BCA ¶ 14,167 (holding that government's acceptance of contractor's counteroffer bound the government to a condition included in the counteroffer where the government "raised no objection").

Indeed, the determination to name a proposed contractor in a proposal is akin to submitting a proposal as part of a teaming arrangement under FAR 9.6 – which is a process routinely engaged in by contractors when working with the government. Despite routine incorporation of standard contracting provisions such as FAR 52.244-5, Competition in Subcontracting, and FAR 52.244-2, Subcontracts, which includes government consent to subcontract provisions, we were unable to find a single reported case where the government prevailed in a claim that a contractor or grantee

improperly awarded a subcontract or contract on a sole source basis to a teaming partner specifically named in its proposal.

2. DOJ's Regulations Do Not Require Maintaining Documentation for Sole Source Awards for Less Than the Simplified Acquisition Threshold

As will be shown below, BGCA has responded to all inquiries in good faith and in full cooperation regarding showing justification for the contracts it awarded and support for all sole source awards. With the utmost respect, please note BGCA has been advised by counsel that DOJ OIG has no basis to claim that BGCA failed to maintain adequate documentation of sole source awards for less than the simplified acquisition threshold, because DOJ's regulations made clear that BGCA had no obligation to maintain such documentation. For instance, the Audit Report findings regarding BGCA's use of sole source contracts is explicitly premised on a lack of documentation. The alleged lack of documentation is a repeated refrain in the audit report:

- "We question $2,962,932 of this amount as being unsupported because the Boys and Girls Clubs' ***documentation did not establish*** that the ***sole source*** criteria were met for most of its contracts." DOJ OIG Report at 6.

- "During the audit, the Boys and Girls Clubs officials provided the OIG with explanations as to why the contracts were subawarded, ***but the contract documents*** did not include support to justify the ***sole source*** basis." DOJ OIG Report at 9.

- "During the audit, the Boys and Girls Clubs officials provided the OIG with additional explanations as to why the contracts were subawarded, ***but we found that the contract files did not contain documentation*** to support those additional explanations." DOJ OIG Report at 12.

However, the audit report notably fails to identify any obligation that BGCA had to maintain documentation to support these sole source determinations to award contracts for less than the simplified acquisition threshold. Significantly, DOJ's own regulations – in multiple places – explicitly chose **not to require grantees to maintain procurement records** for **sole source** awards beneath the simplified acquisition threshold:

> Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc., ***when … the procurement is expected to exceed the simplified acquisition threshold*** and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

28 C.F.R. § 66.36(g)(2)(ii) (emphasis added).

In addition to Part 66, Part 70 of the DOJ grant regulations similarly explicitly does not require maintenance of records regarding sole source determinations for contracts less than the simplified acquisition threshold. For instance, Part 70.46 states:

> Procurement records and files for purchases ***in excess of the small purchase threshold*** must include the following at a minimum:
>
> (a) Basis for contractor selection,
>
> (b) ***Justification for lack of competition when competitive bids or offers are not obtained***, and
>
> (c) Basis for award cost or price.

28 C.F.R. § 70.46.[2]

The conclusion is further set forth in Part 28 C.F.R. § 70.45, which provides:

> ***Recipients must, on request, make available for the Department, pre-award review and procurement documents***, such as request for proposals or invitations for bids, independent cost estimates, etc., ***when any of the following conditions apply*** ... The procurement is ***expected to exceed the small purchase threshold*** fixed at 41 U.S.C. 403(11) (currently $25,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

28 C.F.R. § 70.45(e)(2) (emphasis added).

A cannon of statutory construction is the concept that where a statute or regulation specifically includes one thing in its requirements, others are expressly excluded. See Black's Law Dictionary, "*Inclusio unius est exclusio alterius*". See also O'Melveny & Myers v. FDIC, 512 U.S. 79, 86 (1994). In other words, because these regulations expressly require maintaining documentation for sole source transactions above the simplified acquisition threshold, the failure to include a requirement for transactions below the simplified acquisition threshold means that there is no requirement to maintain such documentation. Moreover, in addition, to this clear regulation that does not require maintaining documentation, we are not aware of any DOJ guidance or regulations that would require maintaining documentation to justify the use of a sole source award.[3]

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[2] The term "small purchase threshold" is a reference to the prior term for "simplified acquisition threshold." "Small purchase threshold" was added to the Office of Federal Procurement Policy Act, 41 U.S.C. § 403(11) (since recodified at 41 U.S.C. § 134) in 1990 and defined as "$25,000 adjusted on October 1 of each year divisible by 5 to the amount equal to $25,000 in constant fiscal year 1990 dollars (rounded to the nearest $ 1,000)." Pub. L. 101-510, Sec. 806 (1990). The term was switched to the "simplified acquisition threshold" through the Federal Acquisition Streamlining Act. See Pub. L. 103-355, § 4001 (1994). In 1994, the threshold was also set as $100,000. Id. On October 1, 2010, the simplified acquisition threshold was raised to $150,000 through an inflation adjustment dictated by section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375). See 75 F.R. 53129 (Aug. 30, 2010).

[3] Even if there was DOJ guidance that directed contractors to maintain documentation regarding sole source awards for less than the simplified acquisition threshold, that guidance would be ineffective, because informal agency guidance cannot supersede or contradict a formal agency regulation that has been subject to notice and comment. Christensen v. Harris County, 529 U.S. 576, 588 (2000) ("To defer to the agency's position would be to permit the agency, under the guise of interpreting a regulation, to create de facto a new regulation. Because the regulation is not ambiguous.").

Therefore, all of the contentions in the audit report that BGCA had deficient "documentation" for sole source procurement below the simplified acquisition threshold are simply not supported by DOJ's own regulations. This means that there can be no problem of lack of documentation for any transaction listed in Table 3 of the audit report as all of those transactions are below the simplified acquisition threshold. Similarly, most of the transactions listed on Table 4 of the audit report were below the simplified acquisition threshold and there was no requirement to maintain documentation.[4]

C. BGCA Has a Long and Successful History of Working with OJP

1. History of Boys & Girls Clubs of America

The very first Club, and the foundation for our Movement, was the Dashaway Club in Hartford, Connecticut. The Dashaway Club was established in 1860. Like many of their peers living in cities across the country, Hartford's economically disadvantaged children of the time led lives that were short on adult guidance and long on juvenile crime. The Dashaway Club offered a safe haven for these children, primarily boys, where they received meaningful adult supervision and had access to a range of programs and activities. With the Dashaway Club, Hartford's young boys had an alternative to the streets and their lives changed for the better. That year the mission of our Movement was born.

The Club concept spread across New England. In 1906, the leaders of the existing 53 Clubs came together to establish a national organization that would do for Clubs what they could not readily do for themselves, and grow the Boys Club mission and message across the country. The national organization was named the "Boys' Clubs of America" later becoming Boys & Girls Clubs of America.

In 1956, in recognition of the 50th anniversary of the founding of the national organization, President Dwight Eisenhower signed Public Law 988 of the 84th Congress of the United States, granting a Congressional Charter to Boys' Clubs of America, further solidifying the status of the Clubs as an important part of the American landscape. In 1996, with the support of Congress, Boys & Girls Clubs of America (the mission and name officially expanded in 1990) began a growth initiative resulting in more than 4,000 Clubs in urban and rural areas, on Native American and Native Alaskan lands, in public housing and public schools, and on U.S. military installations in the United States and across the world.

Today, more than 4,200 Clubs serve nearly 4 million young people annually through Club membership and community outreach. Clubs are located in cities, towns, public housing and on Native lands throughout the country, and serve military families in BGCA-affiliated Youth Centers on U.S. military installations worldwide. They provide a safe place, caring adult mentors, fun, friendship, and high-impact youth development programs on a daily basis during critical non-school hours. Priority programs emphasize academic success, good character and citizenship, and healthy lifestyles.

2. Department of Justice Funding to BGCA

One critical area of support BGCA provides to the local Clubs is the pass-through funding it receives from OJP. For the grant periods from 2008-2012, that funding allowed 605,822 youth collectively to be mentored. The youth served were from many different demographics and needs: At-Risk and High-Risk, Native American, military, and those at-high risk of gang involvement.

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[4] As explained above, each of those seven were sole source awards that were actually approved by DOJ OJP prior to BGCA awarding the sole source contract to its contractors.

More than 80% of grants issued during this period were to Clubs serving youth in communities with a documented CDI (Community Distressed Index) score of 6 or higher, with 10 being the most distressed communities.

To best serve these youth, BGCA made a conscious decision to pass through the majority of the funding it received to the local Clubs. For the relevant period, over $12M was reported as BGCA's outlay and investment in mentoring at Boys & Girls Clubs. The small percentage BGCA did retain (10% or less) was used for direct costs to compliantly and efficiently administer the grants.

There is no question the funds have had a significant positive impact on the lives of millions of youth. With the support of the OJP, an outside consultant, Grant Fundamentals, recently administered a comprehensive, longitudinal three-year evaluation of the effects of group mentoring programming at Boys & Girls Clubs across America. Over the course of the evaluation, 311 Clubs participated in a quantitative study of mentee academic and behavioral performance and attitudes, and 21 Clubs participated in an in-depth case study of group mentoring practices. This evaluation captured the perspectives of 5,110 mentees and 1,003 mentors. Here are some of the findings:

> *BGCA's group mentoring program enhances the Club environment and had a positive effect on youth's social skills.*
>
> Findings from the Site Visits—"The mentors at all the site visit Clubs, regardless of the type of the session that was observed and regardless of the Club, implemented all of the identified research-based outcomes best practices of group mentoring at least to some extent, with many of those being implemented to a great extent."
>
> Findings from Interviews with Mentors—"Group mentoring had benefits that cannot be gained through the traditional model. A majority of mentors noted that group mentoring afforded a social environment for the youth to interact. Not only did the group allow mentees to see that their problems are not unique, it also served as a forum in which closer friendships were formed between mentees."
>
> Findings from Interviews with Mentees—"Mentees learned positive social skills at their Clubs and frequently mentioned anger management, conflict resolution, respecting others, and leadership."
>
> Findings from Impact Analysis – "The majority of mentees have respect for adults, positive attitudes towards school, acceptable social skills, and little if any proclivity towards delinquent behavior."
>
> Overall Findings: The overall conclusion from the study was that BGCA group mentoring has positive effects on its members. "Money invested in group mentoring is well spent and provides these youth with a safe environment to play, learn, and socialize within what is often a dangerous neighborhood. The mentors take their roles seriously and they take the time to connect with and understand their mentees."
>
> *BGCA's mentoring program has the potential to reduce taxpayer costs for at-risk youth.*

"The cost benefit analysis showed substantial potential savings in taxpayer and private citizen costs. The OJJDP three-year investment, when compared with the potential costs of at-risk youth who did not have BGCA mentoring, is approximately seven times less."

3. BGCA Federal Grants Management Systems and Procedures

The funding BGCA receives from OJP to pass through to thousands of local Clubs is critical to our mission to reach and serve young people, especially those who need us most. To protect and ensure the efficacy of these funds, BGCA has instituted and adheres to a comprehensive, standardized and compliant federal grants administration process, from application for funding to grant close.

BGCA is committed to safeguarding and compliantly administering awarded federal grant funds by ensuring that those funds are used reasonably, for authorized purposes in accordance with applicable federal laws and guidelines, and in direct support of the projects for which the dollars were intended.

BGCA administers federal funding with transparency and accountability upholding the highest standards of ethics and propriety in all actions that impact the mission, purpose, reputation, organizational relationships and our commitment to serving this nation's youth most in need. On an annual basis, BGCA employees are required to review and sign a Code of Ethics that details the specific values and professional practices and conduct expected; compliance with the Code of Ethics is a condition of employment. BGCA also ensures that those involved with overall organizational oversight and the management of federal funds have the required knowledge, skills and experience necessary to fulfill the responsibilities of their positions.

BGCA maintains and utilizes, and on an ongoing basis evaluates and updates, a broad-based network of internal controls consisting of policies, systems and procedures. This network is designed to provide measurable assurances that BGCA achieves its federal grant goals and objectives effectively and efficiently, and does so in a manner that is compliant with all applicable requirements and guidelines, and is accurately documented through reliable financial reporting. Some of the key components of BGCA's internal controls are basic control elements such as segregation of duties; maintenance of established policies, procedures and standards of conduct; limited access to cash; and management reviews and approvals. Those policies and procedures include a documented *Federal Vendor Contract Policy* that provides detailed guidance and instruction for BGCA procurement with federal funds, including execution of contracts with federal funding. The following BGCA Federal Grants procedures and processes are currently in place and administered.

a. Federal Grant Application and Budget Development

BGCA develops a federal grant application based upon the specific requirements outlined in the federal Solicitation for funding. The most cost-effective, efficient and impactful methods for accomplishing the program objectives are considered, including whether the work can be accomplished by BGCA staff or if there is a need to contract with an outside vendor(s). As mentioned above, BGCA keeps a very small percentage of the funding to administer the grant. Of that amount, most of the funding is for the important work done by the BGCA Federal Grants Department to compliantly manage the grant. There are a few deliverables that cannot efficiently or compliantly be accomplished by BGCA staff and it becomes necessary to contract with an outside vendor. In those cases, BGCA includes a description of the deliverables of the potential contract and proposed dollar amount BGCA will pay the vendor in the grant application and budget. If a vendor has been identified, the vendor name is included with the budget submitted with the application; if a vendor has not been identified, To Be-Determined (TBD) is noted in the application.

b. Sole Source Justification

BGCA requires a competitive bidding analysis for all federally funded contracts and understands the importance of exercising related due-diligence such that selected vendors are chosen in the best interest of the public dollar and in compliance with all federal guidelines. In some instances, which may include the limited availability of qualified providers of the service, time constraints and related challenges for project completion, and/or inadequate competition based upon past or present requests for proposals, BGCA has determined that a competitive bidding process is not prudent. In such cases and in adherence to federal procurement and BGCA policies, a competitive and comparative cost analysis documenting the process followed in selecting a sole source provider is administered. The sole source justification outlines why a sole source is necessary in order to compliantly deliver the contracted programs and services of the grant in a timely and cost-effective manner. When the proposed vendor contract is over $150,000, BGCA submits a copy of the Sole Source Justification with the grant application or seeks prior funding approval from the federal funding agency when it is not feasible to submit the Sole Source Justification with the grant application.

c. Federal Grant Application Approval & Award Letter

When BGCA receives an official award notice indicating approval of a grant application and the funded dollar amount, the award packet, including all Special Conditions, is reviewed and forwarded to BGCA's President and Board of Governors for approval and acceptance. The award packet is then returned to the awarding agency for execution.

d. Budget and Program Grant Adjustment Notices

In instances where the amount of funding awarded is different than the amount requested in the grant application, BGCA prepares and submits both program and budget Grant Adjustment Notices for funder approval. Focus continues to be given to the program scope and ensuring that deliverables and budget items are in accordance with the final amount of funding awarded and in compliance with all federal guidelines and Special Conditions. Grant funds are not obligated or expended until the final budget Grant Adjustment Notice has been approved and any Special Conditions to the award are completed, which can often take several weeks.

Upon final approval of the budget Grant Adjustment Notice, release of applicable Special Conditions, and authorization to obligate and expend funding, contracts are executed following the aforementioned Federal Vendor Contract Policy. Some of the specific guidelines of that policy include:

- Completing the required competitive bidding and comparative cost analysis;
- Utilizing the prescribed BGCA Contracts with Federal Funds forms;
- Completing the Federal Independent Contractor Agreement (ICA) Checklist and related documentation, which includes: an ICA Cover Memo describing why the services are necessary; the Federal Independent Contractor Agreement; a W-9 for new contractors; a Certificate of Insurance, if applicable; verification that the contractor's rate is within allowable federal limits; verification that the contractor does not appear on the General Services Administration List of Parties Excluded from Federal Procurement or Non-Procurement Programs in SAM.gov; signature on Lobbying Certification and Debarment forms (for vendors over $100k); a signed and dated Vendor Code of Ethics, including a Disclosure Form; Sole Source documentation (if applicable); and

- Ensuring that all required contract review and approval signatures are affixed.

e. Performance Management

The Federal ICA between BGCA and the vendor outlines the specific deliverables of the contract, including the effective dates, scope of services, work product, and a fee and expenses breakdown. BGCA staff responsible for the contract communicate with the vendor throughout the life of the contract. Payment is made only after invoices and supporting documentation are reviewed and approved by both the BGCA Federal Grants and Accounting Services departments.

f. Vendor Performance Reporting

For contracts that include the delivery of services that must be measured and assessed frequently during the contract period, monthly and quarterly written and telephone reporting with vendors is required and documented.

When all contract deliverables are completed or adjusted, if applicable, a Certificate of Contract Completion is executed. The Certificate of Contract Completion includes the name of the vendor, the contract amount, the payment history, total amount paid and any amount due. The document is signed by the BGCA Contract Coordinator and the vendor.

In addition, for the sub-recipient monitoring by accounting firms, the performance is routinely monitored, reviewed and approved by the Audit Committee of BGCA Board of Governors.

g. Federal and BGCA Records Retention Policy Adherence

BGCA administers all federal documents and data in adherence to both federal and BGCA Records Retention Policy addressing federal records.

II. BGCA DETAILED RESPONSE TO OIG RECOMMENDATIONS

NOTE: ALL ATTACHMENTS ARE INDICATED BY SUPERSCRIPT NUMBER

A. Response to OIG Recommendation Number 1

OIG Recommendation Number 1: Remedy the $505,148 in unsupported costs due to the absence of justification in the selection of contracts on a sole source basis.

BGCA Response. BGCA does not concur that the $505,148 identified by OIG in Table 3 below was unsupported due to the absence of justification in the selection of contracts on a sole source basis. BGCA has shown justification for the selection of the vendors. Moreover, there is absolutely no evidence to suggest that the vendors were not efficient and effective, or that there was any misuse of federal dollars. Finally, under the regulations, BGCA had no obligation to maintain documentation to support a sole source award for less than the simplified acquisition threshold. BGCA does concur with the recommendation to remedy the stated concern with OJP.

In addition to the above, BGCA will address each of the below contracts in Table 3 individually to detail that selection of contracts was justified.

In full cooperation, BGCA provided OIG with evidence and procurement records to justify all of the contracts. As noted in the OIG Draft Audit Report (page 12, para. 1), in addition to written

documentation, BGCA lead staff provided narrative information and examples explaining that measures were in place to ensure that federal contractual funds obligated for the services detailed in Tables 4 were utilized in the most compliant, cost-effective and impactful manner feasible to OIG lead staff throughout the audit process. Among those examples discussed:

- *Market Analysis*

BGCA has a long and well-established history of providing highly effective, outcome-driven youth development programs across America, and enjoys a very prominent and informed position as a broker of information and resources regarding related opportunities among both non-profit and for-profit organizations. BGCA is continually inquiring and assessing the market for potential other providers of these services and is frequently approached by consultants, vendors and content experts seeking to contract with BGCA in support of our well-respected and highly impactful programs and services.

- *Comparative Cost Analysis*

On an ongoing basis, BGCA considered the associated cost for BGCA staff to deliver the support and services detailed in the audited contracts and has determined that it would have been measurably more costly for BGCA to deliver the needed support and services internally.

- *Competitive Bidding Process*

BGCA has administered prior competitive bidding analyses involving many of the contractors awarded contracts in Tables 3 and 4. For the OJP FY 2014 grant cycle, BGCA administered a competitive bid process for the support services that FirstPic, Inc. ("FirstPic"), has been contracted with in prior years to deliver and, similar to the last time FirstPic services were competitively bid, we did not receive any responses nor proposals from potential contractors other than FirstPic.

1. Responses Regarding Specific Contracts

Table 3

Grant Number	Contract	Expenditures
2008-JU-FX-K010	Metcalf Davis	$94,620
2008-JU-FX-K010	Contractor One	$31,773
2008-JU-FX-K010	Contractor Three	$1,800
2010-JU-FX-0004	Metcalf Davis	$90,602
2010-JU-FX-0004	Contractor One	$41,176
2010-JU-FX-0004	Contractor Eight	$5,000
2010-JU-FX-0004	Contractor Seven	$9,000
2010-JU-FX-0004	Contractor Ten	$776
2010-JU-FX-0004	Contractor Ten	$11,965
2010-JU-FX-0004	Boys & Girls Clubs of Central Florida	$2,000
2010-TY-FX-0014	Metcalf Davis	$7,950
2010-TY-FX-0014	Contractor One	$0
2011-MU-MU-0009	Metcalf Davis	$90,034
2011-MU-MU-0009	Contractor One	$38,116
2011-MU-MU-0009	Contractor Six	$11,500

2012-JU-FX-0006	Metcalf Davis	$52,267
2012-JU-FX-0006	Contractor One	$16,569
TOTAL		$505,148

a. Metcalf Davis/Contractor One

To most effectively respond to each of the contracts detailed in Table 3 above, the nine contracts executed with Metcalf Davis and Contractor One are responded to collectively as the prescribed procurement processes administered by BGCA were the same for each of the eight awards.

Metcalf Davis/Contractor One

OJP 2008	Grant Number: 2008-JU-FX-K010	Contract #	Vendor: Metcalf Davis	Contract Amount: $94,620
OJP 2008	Grant Number: 2008-JU-FX-K010	Contract #	Vendor: Contractor One	Contract Amount: $31,773
OJP 2010	Grant Number: 2010-JU-FX-0004	Contract #	Vendor: Metcalf Davis	Contract Amount: $90,602
OJP 2010	Grant Number: 2010-JU-FX-0004	Contract #	Vendor: Contractor One	Contract Amount: $41,176
OJP 2010	Grant Number: 2010-TY-FX-0014	Contract #	Vendor: Metcalf Davis	Contract Amount: $7,950
OJP 2011	Grant Number: 2011-MU-MU-0009	Contract #	Vendor: Metcalf Davis	Contract Amount: $90,034
OJP 2011	Grant Number: 2011-MU-MU-0009	Contract #	Vendor: Contractor One	Contract Amount: $38,116
OJP 2012	Grant Number: 2012-JU-FX-0006	Contract #	Vendor: Metcalf Davis	Contract Amount: $52,267
OJP 2012	Grant Number: 2012-JU-FX-0006	Contract #	Vendor: Contractor One	Contract Amount: $16,569
TOTAL				$463,107

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BGCA does not concur that the collective $463,107 awarded to Metcalf Davis and Contractor One was unsupported due to the absence of justification in the selection of contracts on a sole source basis. The following is clarification detailing the related due diligence, process and justification invested prior to selecting to contract with Metcalf Davis and Contractor One.

BGCA, as the pass-through entity of federal funds, is responsible for monitoring the activities of sub-recipients to ensure that federal awards are used for authorized purposes in compliance with the laws, regulations and provisions of contracts or grant agreements, and that performance goals are achieved. BGCA takes this responsibility seriously and engaged the services of public accounting firms Metcalf Davis and Contractor One to assist BGCA in performing site visits to evaluate selected local Boys & Girls Clubs (those receiving BGCA federal pass-through funding) for compliance with specified laws, rules and regulations.

The scope of engagement of Metcalf Davis and Contractor One included:

- Team members meet with BGCA management to determine visit procedures and sites to be visited
- Partners meet with management and the audit committee of BGCA to discuss procedures and site selection
- Perform site visits and utilize agreed-upon procedures for each Club visited
- Upon completion of site visit:
    - Summarize results of the visit
    - Meet with Club management to discuss results of the visit
    - Establish a timeline for addressing any items likely to require corrective action with Club management
    - Follow up with Club to obtain their response to items requiring corrective action
- Following the site visits:
    - Maintain an ongoing summary of site visit results and recommendations made
    - Maintain a detail of all Clubs for which a response is required
    - Follow up with management of the Clubs to ensure an understanding of the items noted and how to most effectively address each
    - Maintain contact with BGCA's management throughout the year to ensure awareness of any items noted
- Provide an interim and final report to the Audit Committee

The appointment of these accounting firms, the agreed-upon procedures and the fees charged are closely reviewed and annually approved by the BGCA Audit Committee in an effort to ensure that the fees are competitive and commensurate with the services provided. The BGCA Audit Committee is comprised of leading professionals in the field (including a partner of a leading accounting firm) who have extensive knowledge of the market rates for these and similar services. The fees for services have been very competitive and have modestly increased from $2,400 per site visit in 2009 to $2,700 per site in 2012.

During each year in question, prior OJP approval was sought as Budget Detail and Budget Narrative documents submitted with the BGCA grant applications to OJP detailed that the services of Contractor One and Metcalf Davis would be contracted to assist with sub-recipient monitoring and to perform audit procedures to be mutually agreed upon in the engagement letter, and that the fees will be on a per-site basis. The detailed costs associated with these activities, including cost per site visit, were also included.

Through their many years of experience with BGCA and local Boys & Girls Clubs, the two accounting firms had a unique and in-depth knowledge that was essential to the effective delivery of the contracted services, especially as the federal grant objectives administered by local Boys

& Girls Clubs evolved. Additionally, it has been demonstrated that their cost/rates were generally equal to or less than companies that performed similar services, but that did not have the necessary BGCA prior experience. Their competitive pricing, prior knowledge of BGCA and local Boys & Girls Clubs, and understanding of OJP federal grant programs and financial requirements were all significant factors in Metcalf Davis/Contractor One contract deliberations, as was the fact that the contracts were well below the $100,000 prior agency consent requirement. See DOJ Financial Guide (updated May 2014) at pg. 21.

In addition, BGCA had in prior years sought and received competitive bids from several accounting and consulting firms as documented in an internal memo to the Chair of the BGCA Audit Committee[1] (Note: this superscript and all hereafter indicate the attachment numbers) issued when these two firms were first selected. Additionally, BGCA sought competitive bids from five CPA firms for these services in FY 2014 and Metcalf Davis submitted the low bid.

There was no improper "absence of justification" regarding the award of these contracts on a sole source basis for the following reasons:

- ***The vendors had historical knowledge and expertise with the BGCA grant requirements so they could efficiently do the work.***
- ***As detailed in the above narrative, the selected vendor provided the unique and prerequisite organizational expertise, knowledge of the BGCA program and responsiveness sufficient to determine as a sole source provider for the contracted services.***
- ***This work had been previously bid and their pricing had remained steady.***
- ***The pricing was annually reviewed by BGCA Audit Committee, comprised of experts in this field.***
- ***A subsequent bidding process showed that for the work Metcalf Davis performed, Metcalf Davis was the lowest bid.***
- ***Funding for each of the contracts was included in the budget Narratives and Budget Detail documents submitted with the application to OJP for funding.***

b. Contractor Three

OJP 2008	Grant Number: 2008-JU-FX-K010	Contract # 2760	Vendor: Contractor Three	Contract Amount: $1,800

BGCA does not concur that the $1,800 awarded to Contractor Three was unsupported due to the absence of justification in the selection of contracts on a sole source basis. Following is clarification detailing the related due diligence, process and justification invested prior to selecting to contract with Contractor Three.

BGCA awarded a $1,800.00 contract to Contractor Three (an independent information technology company) to consult with BGCA Federal Grants and IT staff in identifying and documenting requirements for an Online Federal Grants Allocations Management System and Letter of Agreement Management Technology Application. This enhancement was necessary due to the very large number of OJP Mentoring grants that BGCA was administering at the time (approximately 2,000 grants) and was needed expeditiously due to the grant-related activities underway at that point in the grant cycle and the growing frequency of failures within the existing technology.

Through previous BGCA projects Contractor Three had administered, the company had obtained unique and in-depth knowledge of the complex and expansive functionality of BGCA financial management systems, which, due to the interconnectivity with federal grants systems, was a prerequisite in order for the selected vendor to effectively meet the deliverables of the contract within a short four-week timeframe as detailed in the cover memo to the 2008 Contractor Three Contract[2]. Additionally, BGCA past experience with Contractor Three demonstrated that their cost/rates were generally equal to or less than IT companies that performed similar services, but that did not have the necessary BGCA prior experience. Both the required prior knowledge of BGCA IT systems, as well as the expedited 29-day timeline for product delivery, were significant factors in Contractor Three contract deliberations, as was the fact that the contract was well below the $100,000 prior agency consent requirement. See DOJ Financial Guide (updated May 2014) at pg. 21.

There was no improper "absence of justification" regarding the award of this contract on a sole source basis for the following reasons:

- ***The vendor had historical knowledge and expertise with the BGCA grant requirements so they could efficiently do the work.***
- ***This work was required to be performed on an expedited basis.***
- ***As detailed in the above narrative, the selected vendor provided the unique and prerequisite organizational expertise, knowledge of the BGCA program and responsiveness sufficient to determine as a sole source provider for the contracted services.***

c. Contractor Eight

OJP 2010	Grant Number: 2010-JU-FX-0004	Contract # 7769	Vendor: Contractor Eight	Contract Amount: $5,000

BGCA does not concur that the $5,000 awarded to Contractor Eight was unsupported due to the absence of justification in the selection of contracts on a sole source basis. Following is clarification detailing the related due diligence, process and justification invested prior to selecting to contract with Contractor Eight.

BGCA awarded a $5,000 contract to Contractor Eight (an independent professional communications company with expertise in urban communities) to consult with BGCA and 20 geographically disbursed Boys & Girls Club organizations and write the *Mentoring Matters: Identifying, Recruiting and Retaining Minority Male Mentors*[3] best practices guide to support the minority male mentor recruitment objectives of the OJP FY 2010 grant. The publication was central to the minority male mentor recruitment goals of the grant and needed as early as possible in the OJP FY 2010 grant cycle as BGCA at the time was working very closely with our OJP Program Managers to develop and administer grant-funded initiatives to narrow our nation's critical minority male mentor recruitment gap. BGCA subsequently provided grant funding to Clubs specifically for a Minority Male Mentor Recruitment grant objective, and all OJP FY 2010 grants to local Boys & Girls Clubs required that Clubs "assess and effectively address" the minority male mentor recruitment needs of their grants and their mentees.

Ongoing discussions and correspondence with our OJP program manager[4] was indicative of the level of engagement and collaborative decision making administered throughout the budgeting, development, review and publication of the guide processes.

Through prior experience with BGCA staff, as well as their expertise related to the subject matter, Contractor Eight had a prerequisite understanding of the minority male mentor recruitment dilemma in the U.S., as well as an understanding of the structure and services of the existing 4,100 local chapters of the Boys & Girls Club federation. This experience was essential in order for the selected vendor to effectively consult with BGCA, as well as 20 local Boys & Girls Clubs spread across the U.S., and meet the deliverables of the contract within a short eight-week timeframe as detailed in the 2010 Contractor Eight contract.[5] Additionally, BGCA staff's prior experience with the company demonstrated that their cost/rates were generally equal to or less than companies that performed similar services, but that did not have the necessary BGCA prior experience. The required prior knowledge of the subject matter and understanding of the structure and services of BGCA and local Boys & Girls Clubs, as well as the expedited timeline for product delivery, were significant factors in Contractor Eight contract deliberations, as was the fact that the contract was well below the $100,000 prior agency consent requirement. See DOJ Financial Guide (updated May 2014) at pg. 21.

There was no improper "absence of justification" regarding the award of this contract on a sole source basis for the following reasons:

- ***BGCA staff had prior experience with the vendor.***
- ***The vendor had historical knowledge and expertise with the minority male mentor recruitment dilemma so they could do the work efficiently.***
- ***This work was required to be performed on an expedited basis.***
- ***As detailed in the above narrative, the selected vendor provided the unique and prerequisite organizational expertise, knowledge of the BGCA program and responsiveness sufficient to determine as a sole source provider for the contracted services.***

d. Contractor Seven

OJP 2010	Grant Number: 2010-JU-FX-0004	Contract # 7483	Vendor: Contractor Seven	Contract Amount: $9,000

BGCA does not concur that the $9,000 awarded to Contractor Seven was unsupported due to the absence of justification in the selection of contracts on a sole source basis. Following is clarification detailing the related due diligence, process and justification invested prior to selecting to contract with Contractor Seven.

BGCA awarded a $9,000 contract to Contractor Seven (an independent multi-media learning solutions company with eLearning course development expertise) to produce the *Mentoring at Boys & Girls Clubs* (MBGC) distance and platform learning resources.[6] The MBGC training resources were developed as BGCA's foundational mentoring programs training, and participation in the training was a requirement for all Clubs receiving an OJP FY 2010 sub-award.

Although BGCA had not previously contracted with Contractor Seven, Contractor Seven had key staff with prior BGCA project experience and the company was thoroughly vetted (as recently as three months prior to awarding of the OJP FY 2010 contract) as an RFP respondent for other BGCA learning resource development projects. Contractor Seven was identified by Contractor Seven RFP Scoring Mechanisms[7] and subsequent discussions as a BGCA preferred provider vendor based upon high scoring in areas deemed as essential for the successful delivery of the MBGC resource development, which included pricing, professional staff with prior BGCA contracting experiences, and staffing structure sufficient to perform all work in-house and on an

expedited, four-week timeline as detailed within the 2010 Contractor Seven contract.[8] BGCA's staff knew of Contractor Seven's performance and capacity to deliver on an expedited timeline due to their staff's prior BGCA experience. That familiarity with the company and the company's history of competitively low bids on other BGCA projects were significant factors in Contractor Seven contract deliberations, as was the fact that the contract was well below the $100,000 prior agency consent requirement. See DOJ Financial Guide (updated May 2014) at pg. 21.

There was no improper "absence of justification" regarding the award of this contract on a sole source basis for the following reasons:

- ***BGCA vetted the vendor three months prior to award and BGCA staff were familiar with the company.***
- ***This work was required to be performed on an expedited basis.***
- ***As detailed in the above narrative, the selected vendor provided the unique and prerequisite organizational expertise, knowledge of the BGCA program and responsiveness sufficient to determine as a sole source provider for the contracted services.***

e. Contractor Ten

OJP 2010	Grant Number: 2010-JU-FX-0004	Contract # 7770	Vendor: Contractor Ten	Contract Amount: $775

BGCA does not concur that the $775 awarded to Contractor Ten was unsupported due to the absence of justification in the selection of contracts on a sole source basis. Following is clarification detailing the related due diligence, process and justification invested prior to selecting to contract with Contractor Ten.

The National Gang Symposium was a joint venture of the Office of Juvenile Justice and Delinquency Prevention (OJJDP), the Bureau of Justice Assistance (BJA), The National Gang Center and BGCA. The 2011 National Gang Symposium convened June 7–10, 2011, in Orlando, Florida.

BGCA paid a $775 fee to Contractor Ten, the host venue for the 2011 National Gang Symposium, to provide security/loss prevention services for audio visual equipment rented for the symposium that was necessary for the delivery of the program. Based upon the hotel security provider requirements, and the urgency of this unexpected cost, the hotel was the only available provider of this resource.

At the direct request of OJP leadership, BGCA included funds to convene the 2011 National Gang Symposium in revisions to the OJP FY 2011 budget. OJP leadership was very involved in the planning and details for the symposium, including the selection of the conference hotel and the program/agenda, as well as oversight and approval of the Gang Symposium funding included in the BGCA FY 2011 Budget.[9] This particular cost was discussed previously and approved by our OJP Program Manager.[10] Both the sole source requirements of the hotel that they must provide the security services as well as the expedited timeline for product delivery were significant factors in the Contractor Ten contract deliberations, as was the fact that the contract was well below the $100,000 prior agency consent requirement. See DOJ Financial Guide (updated May 2014) at pg. 21.

There was no improper "absence of justification" regarding the award of this contract on a sole source basis for the following reasons:

- ***OJP approved the expense prior to award through revisions to BGCA's project budget.***
- ***The hotel selected by OJP for the symposium was the only available provider.***
- ***As detailed in the above narrative, the selected vendor was the only one available, which was sufficient to determine it as a sole source provider for the contracted services.***

f. Contractor Ten

		Contract #		Contract Amount:
OJP 2010	Grant Number: 2010-JU-FX-0004	7863	Vendor: Contractor Ten	$11,965

BGCA does not concur that this $11,965 cost was unsupported due to the absence of justification in the selection of contracts on a sole source basis. Following is clarification detailing the related due diligence, process and justification invested prior to selecting to contract with Contractor Ten.

The National Gang Symposium was a joint venture between the Office of Juvenile Justice and Delinquency Prevention (OJJDP), the Bureau of Justice Assistance (BJA), The National Gang Center and BGCA. The 2011 National Gang Symposium convened June 7–10, 2011, in Orlando, Florida.

BGCA paid an $11,965 fee to Contractor Ten, the host venue for the 2011 National Gang Symposium, to provide hotel rooms, meals, labor, shipping and audio visual equipment for the symposium, which were necessary for the delivery of the program. The hotel cost per room night was within the allowable federal hotel per diem rate of $90 per night, and the appropriateness for meals was vetted and approved by OJP leadership per applicable federal guidelines.

At the direct request of OJP leadership, BGCA included funds to convene the 2011 National Gang Symposium in revisions to the OJP FY 2011 budget. OJP leadership was very involved in the planning and details for the symposium, including the selection of the conference hotel and the program/agenda, as well as oversight and approval of the Gang Symposium funding included in the BGCA FY 2011 Budget.[9] These particular costs were discussed previously and approved by our OJP Program Manager.[11] Both the sole source requirements that these products and services had to be delivered by the convening hotel as well as the expedited timeline for product delivery were significant factors in Contractor Ten contract deliberations, as was the fact that the contract was well below the $100,000 prior agency consent requirement. See DOJ Financial Guide (updated May 2014) at pg. 21.

There was no improper "absence of justification" regarding the award of this contract on a sole source basis for the following reasons:

- ***OJP approved the expense prior to award through revisions to BGCA's project budget.***
- ***The hotel selected by OJP for the symposium was the only available provider.***
- ***This work was required to be performed on an expedited basis.***
- ***As detailed in the above narrative, the selected vendor was the only vendor available, which was sufficient to determine it as a sole source provider for the contracted services.***

g. Boys & Girls Clubs of Central Florida

OJP 2010	Grant Number: 2010-JU-FX-0004	Contract # 7878	Vendor: Boys & Girls Clubs of Central Florida	Contract Amount: $2,000

BGCA does not concur that this $2,000 cost was unsupported due to the absence of justification in the selection of contracts on a sole source basis. Following is clarification detailing the related due diligence, process and justification invested prior to selecting to contract with Boys & Girls Clubs of Central Florida.

The National Gang Symposium was a joint venture of the Office of Juvenile Justice and Delinquency Prevention (OJJDP), the Bureau of Justice Assistance (BJA), The National Gang Center and BGCA. The 2011 National Gang Symposium convened June 7–10, 2011, in Orlando, Florida.

BGCA contracted with Boys & Girls Clubs of Central Florida for $2,000 to offset the costs incurred by the Club to prepare a significant number of Boys & Girls Club members to travel to the symposium on multiple occasions and deliver four different youth performances, in addition to the provision of color guard services. The $2,000 was in consideration of the extra costs for Club staff time necessary to prepare and travel with the youth, transportation, needed supplies and other associated costs. The Central Florida Club was selected based upon proximity to the symposium venue and their unique ability to deliver the services on a short preparation timeline.

At the direct request of OJP leadership, BGCA included funds to convene the 2011 National Gang Symposium in revisions to the OJP FY 2011 budget. OJP leadership was very involved in the planning and details for the Symposium, including the selection of the conference hotel, the program & agenda, as well as oversight and approval of the Gang Symposium funding included in the BGCA FY 2011 Budget.[9]. BGCA sought and received prior approval for this cost from our OJP Program Manager who then sought and received additional approval from the OJP Financial Analyst[11]. Both the sole source requirements that these services had to be delivered by Boys & Girls Club members as well as the expedited timeline for product delivery were significant factors in Boys & Girls Clubs of Central Florida contract deliberations, as was the fact that the contract was well below the $100,000 prior agency consent requirement. See DOJ Financial Guide (updated May 2014) at pg. 21.

There was no improper "absence of justification" regarding the award of this contract on a sole source basis for the following reasons:

- ***OJP approved the expense prior to award and received additional approval from the OJP Financial Analyst.***
- ***This work was required to be performed on an expedited basis.***
- ***As detailed in the above narrative, the selected vendor provided the unique and prerequisite organizational expertise, knowledge of the BGCA program and responsiveness sufficient to determine as a sole source provider for the contracted services.***

h. Contractor Six

OJP 2011	Grant Number: 2010-MU-MU-0009	Contract # 10372	Vendor: Contractor Six	Contract Amount: $11,500

BGCA does not concur that this $11,500 cost was unsupported due to the absence of justification in the selection of contracts on a sole source basis. Following is clarification detailing the related due diligence, process and justification invested prior to selecting to contract with Contractor Six.

BGCA awarded an $11,500 contract to Contractor Six (an independent distance learning solutions company with customized course development expertise) to produce the *7C's of Resiliency* distance learning resource.[12] The 7C's of Resiliency learning resources were developed as BGCA's foundational mentoring training tailored specifically for Clubs providing mentoring programs and services to military youth, and participation in the training was a requirement for all military Clubs receiving an OJP FY 2011 mentoring grant from BGCA. These resources were central to the mentoring military youth goals of the grant and were needed as early as possible in the OJP FY 2010 grant cycle as BGCA at the time was working very closely with our OJP Program Managers and the U.S. Department of Defense (DOD) to rapidly develop and administer grant-funded initiatives to mentor military youth.

A significant percentage of BGCA's OJP FY 2011 grant came via a funds transfer from the U.S. Department of Defense ("DOD") through OJP to provide mentoring programs and services to military-connected youth, including those youth residing both on and off-military installations. There are presently 477 BGCA-affiliated Youth Centers on U.S. military installations world-wide, and supporting the development of the specific resiliency character traits critical to military youth development was an area of emphasis stressed by both OJP and DOD during conference calls and project planning early in the grant period.[13] BGCA then committed to develop an effective Military Youth Resiliency Learning Resource[12] that would be available as early as possible in the OJP FY 2011 grant cycle and thus provide optimum impact on mentored military youth.

In 2009, after the review of competitive bids submitted by Contractor Six and two additional companies to support BGCA distance learning projects development, Contractor Six was awarded a contract by BGCA. Their past performance and unique areas of expertise and capabilities were then taken into consideration when electing to sole source the $11,500 OJP FY 2011 contract with Contractor Six. The most important factor was their proven capacity to deliver the project on an expedited four-week timeframe as detailed in the 2008 Contractor Six Contract[14]. Another significant consideration was Contractor Six's history of competitive bid proposal submissions to BGCA.

The required prior knowledge of BGCA as well as the expedited timeline for product delivery and history of low bids on other BGCA projects were significant factors in Contractor Six contract deliberations, as was the fact that the contract was well below the $100,000 prior agency consent requirement. See DOJ Financial Guide (updated May 2014) at pg. 21.

There was no improper "absence of justification" regarding the award of this contract on a sole source basis for the following reasons:

- ***BGCA was familiar with the vendor due to work on a prior project.***
- ***That work was bid out and the vendor was selected over two other companies.***
- ***This work was required to be performed on an expedited basis.***
- ***As detailed in the above narrative, the selected vendor provided the unique and prerequisite organizational expertise, knowledge of the BGCA program and responsiveness sufficient to determine as a sole source provider for the contracted services.***

2. BGCA's Applicable Process Enhancements Going Forward

During the course of this OIG Audit, BGCA made significant enhancements to our Procurement Procedures Governing Contracts Awarded Using Federal Funds Policy[15] to ensure compliance with the rules governing sole source awards; provide for open free and fair competition; and adequately document the procurement process, including market research, cost and price analyses, and the justification for any sole source award. Most importantly, our enhanced Procurement Procedures Governing Contracts Using Federal Funds clearly mandate that all related procurement activities are now fully documented in writing and retained per BGCA Policy, including those procurement activities that fall under the $100,000 (now $150,000) threshold.

B. Response to OIG Recommendation Number 2

OIG Recommendation No.2: Remedy the $2,457,784 in unsupported costs due to inadequate justification in the selection of contractors on a sole source basis.

BGCA Response. BGCA does not concur that the $2,457,784 identified in Table 4 was unsupported costs due to inadequate justification in the selection of contracts on a sole source basis. For the procurements above the simplified acquisition threshold, OJP reviewed and approved the sole source awards. Moreover, there is absolutely no evidence to suggest that the vendors were not efficient and effective, or that there was any misuse of federal dollars. Finally, for the procurements below the simplified acquisition threshold, as explained above, BGCA had no obligation to maintain documentation to support a sole source award. BGCA does concur with the recommendation to remedy the stated concern with OJP.

As explained above, and addressed in more detail below, when contemplating the award of a contract for more than the simplified acquisition threshold, BGCA in fact proposed the use of specific contractors to OJP and received OJP approval prior to award of the contract. In addition, for awards of contracts for less than the simplified acquisition threshold, BGCA had no obligation to maintain records to justify a sole source award. In the spirit of cooperation, BGCA did provide OIG with the procurement records and competitive analysis. As noted in the OIG Draft Audit Report (page 12, para. 1), in addition to written documentation, BGCA lead staff provided narrative information and examples explaining that measures were in place to ensure that federal contractual funds obligated for the services detailed in Tables 4 were utilized in the most compliant, cost-effective and impactful manner feasible to OIG lead staff throughout the audit process. Among those examples discussed:

- *Market Analysis*

BGCA has a long and well-established history of providing highly effective, outcome-driven youth development programs across America, and enjoys a very prominent and informed position as a broker of information and resources regarding related opportunities among both non-profit and for-profit organizations. BGCA is continually inquiring and assessing the market for potential other providers of these services and is frequently approached by consultants, vendors and content experts seeking to contract with BGCA in support of our well-respected and highly impactful programs and services.

- *Comparative Cost Analysis*

On an ongoing basis, BGCA considered the associated costs for BGCA staff to deliver the support and services detailed in the audited contracts, and determined that it would have been measurably more costly for BGCA to deliver the needed support and services internally.

- *Competitive Bidding Process*

BGCA has administered prior competitive bidding analyses involving many of the contractors awarded contracts in Tables 3 and 4. For the OJP FY 2014 grant cycle, BGCA administered a competitive bid process for the support services that FirstPic has been contracted with in prior years to deliver and, similar to the last time FirstPic services were competitively bid, we did not receive any responses nor proposals from potential contractors other than FirstPic.

BGCA will address each of the below contracts in Table 4 individually to detail that the selection of contracts was justified.

1. Responses Regarding Specific Contracts

Table 4

Grant Number	Contract	Expenditures
2008-JU-FX-K010	Contractor Two	$54,989
2008-JU-FX-K010	Contractor Nine	$5,000
2008-JU-FX-K010	FirstPic, Inc.	$404,304
2008-TY-FX-0006	FirstPic, Inc.	$121,534
2009-SC-B9-K010	Metcalf Davis	$115,098
2009-SC-B9-K010	Contractor One	$38,753
2009-SC-B9-K010	Contractor Three	$30,000
2009-SC-B9-K010	Contractor Two	$36,055
2009-SC-B9-K010	FirstPic, Inc.	$375,625
2009-TY-FX-0054	Metcalf Davis	$0
2009-TY-FX-0054	Contractor One	$0
2009-TY-FX-0054	FirstPic, Inc.	$95,000
2010-JU-FX-0004	Contractor Two	$30,000
2010-JU-FX-0004	Contractor Three	$75,000
2010-JU-FX-0004	Contractor Five	$29,094
2010-JU-FX-0004	FirstPic, Inc.	$315,952
2010-TY-FX-0014	FirstPic, Inc.	$84,999
2011-MU-MU-0009	Contractor Four	$54,988
2011-MU-MU-0009	FirstPic, Inc.	$409,989
2012-JU-FX-0006	Contractor Three	$29,000
2012-JU-FX-0006	FirstPic, Inc.	$152,404
TOTAL	-	$2,457,784

a. FirstPic, Inc.

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To most effectively respond to each of the contracts detailed in Table 4 above, the eight contracts awarded to FirstPic are responded to collectively as the prescribed procurement processes administered by BGCA were the same for each of the eight awards.

OJP 2008	Grant Number: 2008-JU-FX-K010	Contract # 2722	Vendor: FirstPic, Inc.	Contract Amount: $404,304
TYM 2008	Grant Number: 2008-TY-FX-0006	Contract # 2423	Vendor: FirstPic, Inc.	Contract Amount: $121,534
ARRA 2009	Grant Number: 2009-SC-B9-K010	Contract # 2871	Vendor: FirstPic, Inc.	Contract Amount: $375,625
TYM 2009	Grant Number: 2009-TY-FX-0054	Contract # 2872	Vendor: FirstPic, Inc.	Contract Amount: $95,000
OJP 2010	Grant Number: 2010-JU-FX-0004	Contract # 7426	Vendor: FirstPic, Inc.	Contract Amount: $315,952
TYM 2010	Grant Number: 2010-JU-FX-0014	Contract # 7427	Vendor: FirstPic, Inc.	Contract Amount: $84,999
OJP 2011	Grant Number: 2011-MU-MU-0009	Contract # 10038	Vendor: FirstPic, Inc.	Contract Amount: $409,989
OJP 2012	Grant Number: 2012-JU-FX-0006	Contract # 10949	Vendor: FirstPic, Inc.	Contract Amount: $152,404
Total				$1,959,807

BGCA does not concur that the collective $1,959,807 awarded to FirstPic, Inc. across the eight contracts were unsupported costs due to inadequate justification in the selection of contracts on a sole source basis. In every instance, BGCA disclosed FirstPic, Inc. both during the application for funding and Budget and Project Scope Grant Adjustment Notice (GAN) processes, and in every instance it was approved by OJP. Following is clarification detailing the related due diligence, process and justification invested prior to selecting to contract with FirstPic, Inc.

BGCA awarded the eight contracts totaling $1,959,807 to FirstPic, Inc. based upon the vendor's combination of proven experience and unique capacity to effectively support BGCA's successful delivery of a broad and uniquely diverse array of programs and services, including the Mentoring Programs Development, Specialized Community Involvement & Support Strategies (Native American, Public Housing, Military, Urban, Rural), Federal Grants Financial Management, Federal Funding Accountability & Transparency Act (FFATA) Compliance & Reporting, Federal Grants Sub-Grantee Programs Monitoring & Reporting (FSRS), Federal Performance Measures Reporting (DCTAT), and Training and Technical Assistance requirements of the grants as detailed by the eight FirstPic, Inc. ICAs.[16]

At the time of the awarding of each of these contracts, BGCA already had significant prior experience working with FirstPic, Inc. in support of other grant programs that often required similar expertise, capacity and scope. In exercising ongoing related due-diligence throughout the period of 2008-2013, BGCA has learned of no other entity with sufficient expertise, capacity, scope or expressed desire to contract for these services. BGCA has discussed this fact on multiple occasions with our OJP Program Managers and has agreed to administer Sole Source Procurement processes so that we may compliantly secure the support necessary to meet grant requirements in a timely manner.

To effectively meet the Grantor Agency Consent for Sole Source Contracting requirements in accord with the page pg. 21 of the DOJ Financial Guide (updated May 2014), BGCA submitted Sole Source Justification documentation for prior OJP review and approval[17] along with each OJP grant application comprehensive FirstPic. BGCA also included FirstPic, as a Sole Source Contractor (with stated budgeted dollars) in the Budget Detail and Budget Narrative submitted with the application. Each Sole Source Justification document was formatted in accordance with the Sample Justification for Non-Competitive Procurement template provided on page 23 of the DOJ Financial Guide.

Highlights of the comprehensive Sole Source Justifications[17] included:

- FirstPic staff members worked in concert with BGCA to develop highly successful nationwide initiatives in public and Indian housing communities, as well as traditional Club environments. This work has included grant monitoring, conducting regional and national training events, conducting detailed needs assessments, the development of curricula and operational materials focusing on BGCA implementation requirements, and the development of targeted expansion efforts and plan, which included multiple new Native Boys & Girls Club sites.

- FirstPic had an unparalleled combination of proven experience and unique capabilities for successful completion of the grant deliverables.

- FirstPic staff members have worked nationwide to implement and sustain effective Boys & Girls Club educational, employment, and youth development programs. The organization currently assists BGCA in the comprehensive support of a network of Native American Clubs in 25 states and over 86 different tribes in Indian Country, as well as Clubs in OJP targeted National Forum on Youth Violence Prevention cities, public housing communities, and in traditional settings.

- FirstPic staff's training and technical assistance have benefited many communities, neighborhood organizations, Indian housing affiliates and public housing communities across the country. They are skilled at amplifying the commitment of local program staff with state-of-the-art professional development, ongoing technical support, and links to a host of partners nationwide.

- FirstPic's approach includes identifying best practices and proven program methods, and promoting broad replication at the local level. Grant monitoring (via a FirstPic-developed Online Grant Reporting System), training and technical assistance, and the development of partnerships are indispensable to ensuring lasting quality program and services. Such ongoing support is vital and is easily accessible through dedicated FirstPic staff for all member organizations.

- FirstPic has coordinated a number of nationwide projects, including demonstration projects, for BGCA. Efforts include grant and site progress monitoring, training and

technical assistance, program implementation, documentation and the tracking of progress, evaluation, needs identification, reporting, and recommendations, including:

- Law Enforcement and Youth Partnerships for Crime Prevention Initiative
- National Native American Mentoring Children of Prisoners Program
- Crime Prevention in Indian Country
- On the T.R.A.I.L. to Diabetes Prevention
- AmeriCorps VISTA in Native Communities

- Contractual coverage for the services was required immediately to comply with an aggressive timetable with regard to measurable, impactful service delivery. No other program, consulting firm, or contractor has both the programmatic expertise and the history with BGCA and Boys & Girls Clubs nationwide to immediately implement a project of this complexity. At a minimum, it would take months to solicit statements of qualifications from contractors, select an alternative contractor, and then train and orient that contractor regarding the background, philosophy, and goals for the project. In addition, any other contractor would require considerable time to develop the linkages with BGCA, the local Boys & Girls Clubs, and public housing and Native American community programs that FirstPic staff members have already developed in more than 12 years of working on special initiatives with BGCA.

Additionally, detailed narrative was included in the Capabilities & Competencies section of the Project Scope Narrative of each of the eight grant applications identifying FirstPic as a significant resource in the delivery of grant programs and services.

For each of the eight FirstPic, Inc. contracts, the FirstPic, Inc. Sole Source Justification documentation was submitted by BGCA for OJP review and approval at least twice as detailed by the below protocols in place:

- BGCA submitted the FirstPic Sole Source documentation along with the initial submission of the BGCA grant application for OJP funding.
- BGCA subsequently received an OJP Award Letter detailing the award amount, citing Special Conditions of the award, etc. Also included in the award materials was the requirement to submit Budget and Program Scope GAN materials based upon the awarded amount.
- BGCA subsequently submitted Budget Detail and Budget Narrative GAN materials that again included the submission of the FirstPic, Inc., Sole Source Justification materials for review and approval.
- BGCA subsequently received OJP approval of the Budget Detail, Budget Narrative and FirstPic, Inc., Sole Source Justification.

To illustrate the efficacy of these contract funds, at OIG's request BGCA provided the comprehensive written monthly and quarterly contract performance reports that were collected and maintained for each of the eight contracts. Additionally, BGCA provided the detailed summary reports from scheduled contract performance phone calls documenting FirstPic, Inc.'s success fulfilling the terms of each of the eight contracts, while delivering a broad spectrum of programs and services with commensurate ROI of contract funds.[18]

There was no "inadequate justification" regarding the award of these contracts on a sole source basis for the following reasons:

- ***BGCA twice submitted each of the eight FirstPic, Inc., comprehensive Sole Source Justification documents for OJP review and approval.***
- ***FirstPic, Inc. was the only provider that BGCA could identify before, during, or since the audit scope period that had the capabilities to effectively deliver the services and that expressed an interest in performing the work.***
- ***Monthly and quarterly reports consistently demonstrated and documented the efficacy of FirstPic, Inc.'s performance.***

b. Contractor Three, Inc.

OJP 2009	Grant Number: 2009-SC-B9-K010	Contract # 4021	Vendor: Contractor Three	Contract Amount: $30,000

OJP 2010	Grant Number: 2010-JU-FX-0004	Contract # 7616	Vendor: Contractor Three	Contract Amount: $75,000

OJP 2012	Grant Number: 2012-JU-FX-0006	Contract # 10748	Vendor: Contractor Three	Contract Amount: $29,000
TOTAL				$134,000

To most effectively respond to each of the contracts detailed in Table 4 above, the three contracts awarded to Contractor Three, Inc., are responded to collectively as the prescribed procurement processes administered by BGCA were the same for each of the three awards.

BGCA does not concur that the collective $134,000 awarded to Contractor Three across the three contracts were unsupported costs due to inadequate justification in the selection of contracts on a sole source basis. Following is clarification detailing the related due diligence, process and justification invested prior to selecting to contract with Contractor Three.

BGCA awarded the three contracts totaling $134,000 to Contractor Three (an independent information technology company) to continue to develop the multiple Online Federal Grants Allocation System and Letter of Agreement Management Technology Applications that were developed in phases across each of the three contracts. These enhancements were necessary due to the very large number of OJP Mentoring grants that BGCA was administering at the time (approximately 2,000 plus grants) and the resulting federal grant-making and grants administration inefficiencies that were created due to the lack of appropriate technology solutions. As detailed in the attached three Contractor Three ICAs[19], the technology solutions delivered for these three contracts were continued iterations of the product development process began by Contractor Three in 2008.

Through the previous BGCA projects Contractor Three had administered, the company had a unique and in-depth knowledge of the complex and expansive functionality of BGCA financial management systems and their interconnectivity with BGCA financial grants management systems. Most importantly, in 2008 Contractor Three had developed the foundational work for the technology solutions that were continued in phases across the three successive contracts. To

contract with another vendor to deliver the technology solutions already underway would have been extremely cost-ineffective and would have created extreme delays in product delivery. Additionally, BGCA's past experience with Contractor Three demonstrated that their cost/rates were generally equal to or less than IT companies that performed similar services, but did not have the necessary BGCA prior experience.

Funding for each of the three contracts was included in the respective OJP FY 2009, 2010 and 2012 Budget Narratives and Budget Detail documents submitted with the application to OJP for funding.

The significant cost efficiencies and product development advantages realized by Contractor Three's prior, sole source knowledge of BGCA IT systems were significant factors in Contractor Three Sole Source[20] selection and related contract deliberations, as was the fact that each of the three contracts were well below the $100,000 prior agency consent requirement as detailed in the earlier referenced excerpt from page 21 of the DOJ Financial Guide.

There was no "inadequate justification" regarding the award of these contracts on a sole source basis for the following reasons:

- ***The vendor had historical knowledge and expertise with the BGCA grant requirements so they could do the work efficiently.***
- ***Funding for each of the three contracts was including in the budget narratives and budget details submitted by BGCA with its application for funding.***
- ***This work was required to be performed on an expedited basis.***
- ***As detailed in the above narrative, the selected vendor provided the unique and prerequisite organizational expertise, knowledge of the BGCA program and responsiveness sufficient to determine as a sole source provider for the contracted services.***

c. Contractor Two

OJP 2008	Grant Number: 2008-JU-FX-K010	Contract # 2328	Vendor: Contractor Two	Contract Amount: $54,989
OJP 2009	Grant Number: 2009-SC-B9-K010	Contract # 2820	Vendor: Contractor Two	Contract Amount: $36,055
OJP 2010	Grant Number: 2010-JU-FX-0004	Contract # 7464	Vendor: Contractor Two	Contract Amount: $30,000
TOTAL				$121,044

To most effectively respond to each of the contracts detailed in Table 4 above, the three contracts awarded to Contractor Two are responded to collectively as the prescribed procurement processes administered by BGCA were the same for each of the three awards.

BGCA does not concur that the collective $121,044 awarded to Contractor Two across the three contracts were unsupported costs due to inadequate justification in the selection of contracts on a sole source basis. Following is clarification detailing the related due diligence, process and justification invested prior to selecting to contract with Contractor Two.

BGCA awarded the three contracts totaling $121,044 to Contractor Two (an independent information technology company) to provide maintenance, repairs, data/document migration, and necessary enhancements to BGCA's existing Federal Grants Management System (GMS) technology. Sequential and incremental deliverables were included in each contract that progressively built upon those in the prior contract. These services were necessary as the existing GMS was a dated technology solution that no longer effectively supported the volume of data housed and very large number of OJP Mentoring grants that BGCA was administering at the time (approximately 2,000-plus grants annually). Over the many years of service, the existing GMS had increasingly shown signs of failure and had undergone a number of work arounds and fixes by third-party vendors. The plan in place at the time was to provide the resources needed to maintain the existing GMS as a functional federal grants management system during the approximate three-year transition period required to have the new online federal grants management system developed and activated.

BGCA first became aware of Contractor Two in early 2007 as the company submitted a selected proposal to BGCA in response to an RFP/competitive bidding process. Contractor Two proposal scored highly and they caught the BGCA IT team's attention due to their experience working with antiquated database systems that had undergone many of the same challenges and work arounds as the BGCA GMS, as well as their very competitive pricing. Additionally, Contractor Two is a minority-owned company.

Resulting from the prior, related BGCA IT project administered by Contractor Two, the company further gained a unique and in-depth knowledge of the BGCA GMS solution. Even though Contractor Two had significant prior experience working with technologies and challenges similar to the BGCA GMS, it was noted that there was still a very significant learning curve for the company as they were challenged to learn the GMS and identify and resolve the work arounds that were administered through the years. To contract with another technology company to deliver the services required for each of the three contracts would have created extreme delays in service delivery and likely would have resulted in BGCA being without a functioning GMS for an unacceptable period of time. Additionally, BGCA past experience with Contractor Two demonstrated that their cost/rates were generally equal to or less than IT companies that performed similar services, but that did not have the necessary BGCA prior experience. Funding for each of the three contracts was included in the respective OJP FY 2009, 2010 and 2012 Budget Narratives and Budget Detail documents submitted with the application to OJP for funding.

The significant cost efficiencies and critical service delivery readiness advantages realized by Contractor Two's prior, sole source knowledge of BGCA IT systems were significant factors in Contractor Two Sole Source Contract[21] deliberations, as was the fact that each of the three contracts were well below the $100,000 prior agency consent requirement as detailed in the earlier referenced excerpt from page 21 of the DOJ Financial Guide.

There was no "inadequate justification" regarding the award of these contracts on a sole source basis for the following reasons:

- ***In 2007, Contractor Two submitted a selected proposal to BGCA in response to an RFP/competitive bidding process. Contractor Two's proposal scored high and they caught the BGCA IT team's attention due to their experience working with antiquated data base systems that had undergone many of the same challenges and work-arounds as the BGCA GMS, as well as their very competitive pricing. Additionally, Contractor Two is a minority-owned company.***
- ***BGCA included funding for each of the three contracts by with its Budget Narratives and Budget Detail documents submitted with the application to OJP for funding.***

- ***As detailed in the above narrative, the selected vendor provided the unique and prerequisite organizational expertise, knowledge of the BGCA program and responsiveness sufficient to determine as a sole source provider for the contracted services.***

d. Contractor Five

OJP 2010	Grant Number: 2010-JU-FX-0004	Contract # 7741	Vendor: Contractor Five	Contract Amount: $29,094

BGCA does not concur that the $29,094 awarded to Contractor Five was unsupported costs due to inadequate justification in the selection of contracts on a sole source basis. Following is clarification detailing the related due diligence, process and justification invested prior to selecting to contract with Contractor Five.

The National Gang Symposium was a joint venture of the Office of Juvenile Justice and Delinquency Prevention (OJJDP), the Bureau of Justice Assistance (BJA), The National Gang Center and BGCA. The 2011 National Gang Symposium convened June 7–10, 2011, in Orlando, Florida.

BGCA contracted Contractor Five for $29,094 to coordinate, produce and deliver multi-media support of the 2011 National Gang Symposium. Contractor Five's contract deliverables included a broad range of services, e.g., capturing video of the program, audio visual support for sessions, scripting, etc.[22] BGCA had prior, successful experience contracting with Contractor Five, which included Contractor Five providing similar services for the prior three National Gang Symposiums. Contractor Five was a BGCA preferred vendor based upon their history of performance, pricing, knowledge of BGCA, etc., and had been awarded prior BGCA contracts through competitive bidding processes.

Funding for this contract was included in the 2011 Budget Narrative and Budget Detail document submitted with the application to OJP for funding.

At the direct request of OJP leadership, BGCA included funds to convene the 2011 National Gang Symposium in the revised OJP FY 2011 budget. OJP leadership was very involved in the planning and details for the symposium, including the selection of the conference hotel and the program/agenda, as well as oversight and approval of the Gang Symposium funding included in the BGCA FY 2011 budget[9] . BGCA sought and received a competitive bid for these services and the proposal received was priced well above the Contractor Five proposal. Budgeting for the 2011 National Gang Symposium was a late add-on to the BGCA OJP FY 2011 budget at the request of OJP, and planning and delivery of the symposium was required to be administered in an expedited manner.

Contractor Five's prior BGCA experience, as well as the expedited timeline for product delivery, were significant factors in Contractor Five contract deliberations, as was the fact that the contract was well below the $100,000 prior agency consent requirement as detailed in the prior noted excerpt from page 21 of the DOJ Financial Guide.

There was no "inadequate justification" regarding the award of these contracts on a sole source basis for the following reasons:

- ***Contractor Five was a BGCA preferred vendor based upon their history of performance, pricing, knowledge of BGCA, etc., and had been awarded prior BGCA contracts through competitive bidding processes.***
- ***BGCA sought and received a competitive bid for these services and the proposal received was priced well above the Contractor Five proposal.***
- ***Funding for each of the contracts was included in the Budget Narratives and Budget Detail documents submitted with the application to OJP for funding.***
- ***As detailed in the above narrative, the selected vendor provided the unique and prerequisite organizational expertise, knowledge of the BGCA program and responsiveness sufficient to determine as a sole source provider for the contracted services.***

e. Metcalf Davis/Contractor One

ARRA 2009	Grant Number: 2009-SC-B9-K010	Contract # 2545	Vendor: Metcalf Davis	Contract Amount: $115,098
ARRA 2009	Grant Number: 2009-SC-B9-K010	Contract #	Vendor: Contractor One	Contract Amount: $38,753
Total				$153,851

To most effectively respond to each of the contracts detailed in Table 4 above, the two contracts executed with Metcalf Davis and Contractor One are responded to collectively as the prescribed procurement processes administered by BGCA were the same for both awards.

BGCA does not concur that the collective $153,851 awarded to Metcalf Davis and Contractor One was unsupported due to the absence of justification in the selection of contracts on a sole source basis. The proposed contracts for both awards were included in the Budget Detail and Budget Narrative submitted by BGCA with the respective OJP grant applications and therefore prior approved by OJP. The 2009-SC-B9-K010 $115,098 contract was $96,700 contractual fees and $18,398 travel expense reimbursement. The award under grant 2009-SC-B9-K010 was coordinated with and approved by OJP. Following is clarification detailing the related due diligence, process and justification invested prior to selecting to contract with Metcalf Davis and Contractor One.

BGCA, as the pass-through entity of federal funds, is responsible to monitor the activities of sub-recipients to ensure that federal awards are used for authorized purposes in compliance with the laws, regulations and provisions of contracts or grant agreements, and that performance goals are achieved. BGCA takes this responsibility seriously and engaged the services of public accounting firms Metcalf Davis and Contractor One to assist BGCA to perform site visits to evaluate selected local Boys & Girls Clubs (those receiving BGCA federal pass-through funding) in compliance with specified laws, rules and regulations.

The appointment of these accounting firms, the agreed-upon procedures and the fees charged are closely reviewed and annually approved by the BGCA Audit Committee in an effort to ensure that the fees are competitive and commensurate with the services provided. The BGCA Audit Committee is comprised of leading professionals in the field (including a partner of a leading accounting firm) who have extensive knowledge of the market rates for these and similar services.

The fees for services have been very competitive and have modestly increased from $2,400 per site visit in 2009 to $2,700 per site in 2012.

The scope of engagement of Metcalf Davis and Contractor One included:

- Team members meet with BGCA management to determine visit procedures and sites to be visited
- Partners meet with management and the audit committee of BGCA to discuss procedures and site selection
- Perform site visits and perform agreed-upon procedures for each Club visited
- Upon completion of site visit:
    - Summarize results of the visit
    - Meet with Club management to discuss results of the visit
    - Establish a timeline for addressing any items likely to require corrective action with Club management
    - Follow up with Club to obtain their response to items requiring corrective action
- Following the site visits:
    - Maintain an ongoing summary of site visit results and recommendations made
    - Maintain a detail of all Clubs for which a response is required
    - Follow up with management of the Clubs to ensure an understanding of the items noted and how to most effectively address each
    - Maintain contact with BGCA's management throughout the year to ensure awareness of any items noted
- Provide an interim and final report to the Audit Committee

During each year in question, prior OJP approval was sought as Budget Detail and Budget Narrative documents submitted with the BGCA grant applications to OJP detailed that the services of Contractor One and Metcalf Davis would be contracted to assist with sub-recipient monitoring and to perform audit procedures to be mutually agreed upon in the engagement letter, and that the fees will be on a per-site basis. The detailed costs associated with these activities, including cost per site visit, were also included.

Through their many years of experience with BGCA and local Boys & Girls Clubs, the two companies had a unique and in-depth knowledge that was essential to the effective delivery of the contracted services, especially as the federal grant objectives administered by local Boys & Girls Clubs evolved. Additionally, it has been demonstrated that their cost/rates were generally equal to or less than companies that performed similar services, but that did not have the necessary BGCA prior experience. Their competitive pricing along with required prior knowledge of BGCA and local Boys & Girls Clubs and OJP federal grant programs and financial requirements were all significant factors in Metcalf Davis/Contractor One contract deliberations.

While the competitive cost analysis was not formally documented for the Metcalf Davis and Contractor One contracts under review, BGCA had in prior years sought and received competitive bids from several accounting and consulting firms as documented in an internal memo to the Chair of the BGCA Audit Committee[1] issued when these two firms were first selected. Additionally, BGCA sought competitive bids from five CPA firms for these services in FY 2014 and Metcalf Davis submitted the low bid.

There was no "inadequate justification" regarding the award of these contracts on a sole source basis for the following reasons:

- ***The vendors had historical knowledge and expertise with the BGCA grant requirements so they could do the work efficiently.***
- ***This work had been previously bid and their pricing had remained steady.***

- ***The pricing was annually reviewed by BGCA Audit Committee, comprised of experts in this field.***
- ***A subsequent bidding process showed that for the work Metcalf Davis performed, Metcalf Davis was the lowest bid.***
- ***Funding for each of the contracts was included in the Budget Narratives and Budget Detail documents submitted with the application to OJP for funding.***
- ***As detailed in the above narrative, the selected vendor provided the unique and prerequisite organizational expertise, knowledge of the BGCA program and responsiveness sufficient to determine as a sole source provider for the contracted services.***

f. Contractor Four

OJP 2011	Grant Number: 2011-JU-FX-0009	Contract # 10234	Vendor: Contractor Four	Contract Amount: $54,988

BGCA does not concur that the $54,988 awarded to Contractor Four was unsupported costs due to inadequate justification in the selection of contracts on a sole source basis. Following is clarification detailing the related due diligence, process and justification invested prior to selecting to contract with the Contractor Four.

BGCA awarded the $54,988 contract to the Contractor Four (Contractor Four is internationally recognized for their expertise in the military youth education field) to produce the *7C's of Resiliency* training resources[12]. The 7C's of Resiliency training and learning resources were developed as BGCA's foundational mentoring training tailored specifically for Clubs providing mentoring programs and services to military youth, and participation in the training was a requirement for all military Clubs receiving an OJP FY 2011 mentoring grant from BGCA. Dr. [redacted], a renowned expert in the field and affiliate of the Contractor Four, worked closely with Contractor Four to develop the materials designed specifically to address and impact the unique emotional stresses often endured by Boys & Girls Club members who have military deployed parents. Dr. [redacted]'s involvement in the project was critical and there were no other resources identified and available with his experience and competencies. These resources were central to the mentoring military youth goals of the grant and were needed as early as possible in the OJP FY 2010 grant cycle as BGCA at the time was working very closely with our OJP Program Managers and the U.S. Department of Defense (DOD) to rapidly develop and administer grant-funded initiatives to mentor military youth. A significant percentage of BGCA's OJP FY 2011 grant came via a funds transfer from the DOD through OJP to provide mentoring programs and services to military-connected youth, including those youth residing both on and off-military installations. There are presently 477 BGCA-affiliated Youth Centers on U.S. military installations worldwide, and supporting the development of the specific resiliency character traits critical to military youth development was an area of emphasis stressed by both OJP and DOD during conference calls and project planning early in the grant period.[13] BGCA then committed to develop an effective Military Youth Resiliency Learning Resource[12] that would be available as early as possible in the OJP FY 2011 grant cycle and thus provide optimum impact on mentored military youth.

Contractor Four's unique and singular expertise as well as their availability and commitment to meet an expedited timeline for product delivery were significant factors in Contractor Four contract deliberations, as was the fact that the contract was well below the $100,000 prior agency consent requirement as detailed in the prior noted excerpt from page 21 of the DOJ Financial Guide.

There was no "inadequate justification" regarding the award of these contracts on a sole source basis for the following reasons:

- ***The vendor had unique and singular expertise.***
- ***They were available and committed to meet an expedited timeline for product delivery.***
- ***As detailed in the above narrative, the selected vendor provided unique and prerequisite expertise and responsiveness sufficient to determine as a sole source provider for the contracted services.***

2. BGCA's Applicable Process Enhancements Going Forward

During the course of this OIG Audit, BGCA made significant enhancements to our Procurement Procedures Governing Contracts Awarded Using Federal Funds Policy[15] to ensure compliance with the rules governing sole source awards; provide for open free and fair competition; and adequately document the procurement process, including market research, cost and price analyses, and the justification for any sole source award. Most importantly, our enhanced Procurement Procedures Governing Contracts Using Federal Funds clearly mandate that all related procurement activities are now fully documented in writing and retained per BGCA Policy and applicable regulations, including those procurement activities that fall under the $100,000 (now $150,000) simplified acquisition threshold.

C. Response to OIG Recommendation Number 3

OIG Recommendation No.3: Ensure that Boys & Girls Clubs implement procedures for conducting procurements that comply with the rules governing sole source awards; provide for open, free and fair competition; and adequately document the procurement process, including market research, cost and price analyses, and justification for any sole source award.

BGCA Response. As shown above, BGCA has always maintained procedures for conducting procurements that comply with the rules governing sole source awards; provide for open, free and fair competition; and adequately document the procurement process, including market research, cost and price analyses, and justification for any sole source award. BGCA has and will continue to implement the below described process enhancements.

Applicable BGCA Process Enhancements

During the course of this OIG Audit, BGCA made significant enhancements to our Procurement Procedures Governing Contracts Awarded Using Federal Funds Policy[15] to ensure compliance with the rules governing sole source awards; provide for open free and fair competition; and adequately document the procurement process, including market research, cost and price analyses, and the justification for any sole source award. Most importantly, our enhanced Procurement Procedures Governing Contracts Using Federal Funds clearly mandate that all related procurement activities are now fully documented in writing and retained per BGCA and Federal Records Retentions Policy, including those procurement activities that fall under the $100,000 (now $150,000) procurement with federal funds threshold.

D. Response to OIG Recommendation Number 4

OIG RECOMMENDATION No. 4: Ensure Boys & Girls Clubs complies with the OJP Financial Guide requirement for explicit lobbying certification from contractors that grant funds have not and will not be used for lobbying activity.

BGCA RESPONSE: BGCA will comply with the OJP Financial Guide Requirement.

BGCA will comply with the requirement for lobbying certification from contractors. As specifically noted by OIG on page 15 of the Draft Audit Report, BGCA has always and will continue to submit the required certification forms to OJP indicating that it had not and would not use appropriated funds for lobbying.

With regard to contractors, BGCA understands and respects the requirement set forth in 31 U.S.C. 1352. For the relevant grants, the only contractor to meet the $100,000 threshold requiring the submission of a separate certification was FirstPic, Inc. Boys & Girls Clubs of America addressed several compliance matters, including the lobbying certification requirement, in the relevant contracts with FirstPic under Section 7:

EXCERPT FROM FIRSTPIC CONTRACT

7. COMPLIANCE WITH FEDERAL FINANCIAL AND ADMINISTRATIVE REQUIREMENTS

Contractor agrees to comply with the financial and administrative requirements set forth in the procurement provisions of Appendix A to Circular A-110 (Revised 11/19/93, as Further Amended 9/30/99), including, but not limited to:

a) **Equal Employment Opportunity.** Contractor shall comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

b) **Rights to Inventions Made Under a Contract or Agreement.** Contractor shall comply with the rights of the Federal Government, BGCA and Contractor in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

c) **Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended.** Contractor shall agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

d) **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractor shall file the required certification for bids of $100,000 or more. Contractor shall certify to BGCA that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of

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Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Signed form attached.

e) **Debarment and Suspension (E.O.s 12549 and 12689)**. Contractor shall not make any contract with parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Non-Procurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractor shall provide the required certification to BGCA regarding its exclusion status and that of its principal employees for all bids exceeding the small purchase threshold (currently set at $100,000). Signed form attached.

f) **Organizational Audit Requirements of OMB Circular A-133**. Contractor shall comply with the Organizational Audit Requirements of OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations, subpart B, §__.200, §__.205 and §__.210. As such, payments received for goods or services provided as a vendor would not be considered Federal awards.

g) **Confidentiality Requirements of 42 U.S.C. § 3789g and 28 CFR Part 22**. Contractor shall comply with all confidentiality requirements of 42 U.S.C. section 3789g and 28 CFR Part 22 that are applicable to the collection, use, and revelation of data or information.

BGCA does not have the requested executed forms on file for the relevant grant periods. However, it should be noted OIG specifically verified on page 18 of the Draft Audit Report that a detailed review of the grants to FirstPic affirmed that no charges to grant funds for lobbying activities were made.

Applicable BGCA Process Enhancements

Three mechanisms are now in place to ensure that the required lobbying certification form will be signed and filed contemporaneously with the execution of any contracts with vendors that exceed the $100,000 (now $150,000) threshold.

First mechanism - the Federal Vendor Contract Policy[15] that sets forth the requirements for using Independent Contractor Agreements (ICA) specifically requires the execution of the forms under Section 4. Here is the language in Section 4 of the Federal Vendor Contract Policy:

EXCERPT FROM FEDERAL VENDOR CONTRACT POLICY

4. ICA CHECKLIST AND SIGNATURES

Before submitting your contract to Financial Services, you must have a fully completed ICA Checklist attached with all necessary signatures. You are required to have the signatures of the following on your Checklist:

Contract Coordinator
Contract Coordinator's Supervisor

Senior Vice President of Department
Senior Director, Federal Grants
Vice President, Federal Grants
Senior Vice President, General Counsel

You must attach a signed Vendor Code of Ethics.

You must verify in SAM.gov the contractor does not appear on General Services Administration List of Parties Excluded from Federal Procurement or Non-Procurement Programs. Verification document should be attached to ICA package.

If your contract exceeds $100,000 you must obtain from the vendor and attach to the contract an executed Lobbying Certification (form 7(d)) and Debarment and Suspension (form 7(e))

If your contract is Information Technology (IT) related, you will need to obtain all the above signatures and submit your contract packet to the Chief Information Officer.

If your contract is with a hotel, you will need to obtain all the above signatures and submit your contract packet to the Director of Conferences and Learning Events for review and to obtain a signature on the Checklist before you submit the contract to Financial Services. Please note that it is not allowed to charge alcohol to any contract using federal funds and there are strict federal guidelines for meals and per diem costs. You must complete the Federal Food and Beverage Cost Certification.

The above required signatures are to sign off on the **checklist only**. They are **NOT** to be added to the contract. **No one in the above list is allowed to execute a contract.**

Federal Grants will verify the budget information on the checklist. Include the amount allocated in the budget, the amount of the contract, and the appropriate account codes.

Second mechanism - the Independent Contractor Agreement Using Federal Funds Checklist[25] has a box that needs to be checked stating the forms are attached if the contact exceeds $100,000.

FEDERAL ICA CHECKLIST			
Contractor Name:		Deadline Contract Needed:	
Account Code		Term (dates) of Agreement:	
Funding Source:		Amount Allocated in Budget:	
Conference/Event:		Amount to be Paid to Vendor:	

All contract packets must have the following attached:	
☐	Cover Memo (explain project components)
☐	Contract (only one copy needed)
☐	W9 (new contractor only)
☐	Certificate of Insurance (COI), if applicable
☐	Verify contractor's rate does not exceed $650 per eight-hour day or $81.25 per hour
☐	Verify in SAM.gov contractor does not appear on General Services Administration List of Parties Excluded from Federal Procurement or Non-Procurement Programs

All contracts must have the following additional items attached as well:	
☐	Vendor Code of Ethics
☐	If Contract exceeds $100,000 obtain and attach signed 7d and 7e forms (Lobbying Certification and Debarment)
☐	Documentation of competitive bidding analysis

Third mechanism - the following language is highlighted in the body of the Federal ICA template[24] in Section 7 (shown above), just above 7d.

If total amount of payment is at or **above $100,000**, contractor must sign additional certification forms (refer to section **7d** and **7e**). Attach these forms to the contract.

As such, BGCA is confident that the lobbying certification forms required for contractors receiving contracts over $100,000 will be executed and filed.

E. Response to OIG Recommendation Number 5

OIG RECOMMENDATION No. 5: Ensure Boys & Girls Clubs and its contractors comply with the requirements of the OJP Financial Guide regarding the proper filing of the lobbying disclosure form.

BGCA RESPONSE: BGCA and its contractors will properly file the lobbying disclosure forms and submits that BGCA substantially complied with all relevant disclosures.

BGCA respectfully requests the opportunity to correct several findings set forth by the OIG on pages 15-18 of the Draft Audit Report. As noted on page 15, BGCA did submit its required disclosure forms identifying lobbying registrants and individual lobbyists who had conducted lobbying efforts on behalf of BGCA. OIG asserts some discrepancies in the reporting which BGCA will address and correct below.

It is important to note that submission of the lobbying disclosure form to OJP (the SF-LLL) with a grant application is separate and distinct from the requirements under the Lobbying Disclosure Act. The SF-LLL is submitted to OJP as part of the grant application and requires disclosure of lobbying activities associated with the grant being applied for, not disclosure of all lobbying done on behalf of the applicant generally or during that entire calendar year. The Lobbying Disclosure Act requires an entity to register as a lobbyist, list the individual employees lobbying for that entity, and to submit all defined lobbying expenses incurred, including use of external lobbyists. Please find below an explanation for each alleged discrepancy set forth in the chart on page 17 of the Audit Report.

Alston & Bird. Lobbyist Nine, Alston & Bird and Lobbyist Ten, Alston & Bird

OIG asserts BGCA did not identify Alston & Bird in its 2012 disclosure and did not list Lobbyist Nine, Alston & Bird and Lobbyist Ten, Alston & Bird as individual lobbyists in 2012. ***This was a proper disclosure by BGCA.*** BGCA did not identify them on their disclosure in their 2012 grant application because they did not perform any lobbying activities associated with that grant. Alston

& Bird began lobbying for BGCA in 2012 on a different matter and well after the disclosure of lobbyists that did work for the grant for which the application was submitted.

FirstPic, Inc.

OIG asserts that BGCA did not identify FirstPic in BGCA's 2008 disclosure forms to OJP. ***This was a proper disclosure by BGCA.*** At the time of the 2008 application, FirstPic was not registered as a lobbyist for BGCA and had not done any lobbying activities related to that grant.

Lobbyist Three, Boys & Girls Clubs of America

OIG asserts BGCA did not identify Lobbyist Three as an individual lobbyist for BGCA in 2008 and 2009. ***This was a proper disclosure by BGCA.*** Lobbyist Three was the Vice President of Military Services and never performed any lobbying activities associated with any of the OJP grants. He was registered as an individual employee under the Lobbying Disclosure Act for BGCA but it was for unrelated lobbying.

Van Scoyoc Associates

BGCA contracted with Van Scoyoc Associates to provide lobbying services for BGCA. Lobbyist Six was point of contact for BGCA. As such, BGCA identified Van Scoyoc Associates and Lobbyist Six as the lobbying entity and associated individual in 2008 and 2009. BGCA was not aware that she enlisted support from Lobbyist Seven from her firm and did not identify him.

Applicable BGCA Process Enhancements

BGCA now requires that all lobbyists send their Lobbying Disclosure Act forms to BGCA to ensure that all individuals can be properly identified. Please note that for the forms BGCA has to file under the Lobbying Disclosure Act, individual names of lobbyists are not required so those forms have been properly submitted.

As such, BGCA is confident that it will comply with the requirements of the OJP Financial Guide regarding the proper filing of the lobbying disclosure form.

F. Response to OIG Recommendation Number 6

OIG RECOMMENDATION No. 6: Ensure that Boys & Girls Clubs verifies that all contractors use a written code of conduct document with language that specifically addresses all of the requirements provided in the OJP Procurement Guide.

BGCA RESPONSE: Based on its reading of the OJP Procurement Guide, BGCA does not concur that this recommendation is required by the Guide. BGCA appreciates and respects that guideline to require that a code of conduct be established for its employees, which will be addressed more fully in response to OIG Recommendation Number 7. With respect to contractors, as stated by OIG on page 18, the OJP Financial Guide required BGCA to have a documented process to check for organizational conflicts of interest with potential contractors. This is done through the Boys & Girls Clubs of America Code of Ethics for employees and the Vendor Code of Ethics.

Applicable BGCA Process Enhancements
Regardless, BGCA has taken several steps to meet the above recommendation for vendors.

First mechanism - the Independent Contractor Agreement Using Federal Funds[24] template has a Vendor Code of Ethics as Exhibit "A" of the template that now includes the following requirement:

- A Vendor will have an internal code of conduct that meets all requirements of the OJP Procurement Guide.

See Exhibit "A" to the Federal Funds Independent Contractor Agreement[24].

Vendors will certify that this requirement is met and have an opportunity to disclose if the requirement may not be met for BGCA review. The disclosure form is also part of Exhibit "A" of the Federal ICA template[24].

Second mechanism - the Independent Contractor Agreement Using Federal Funds Checklist[25] has a box that needs to be checked stating the Vendor Code of Ethics was signed, dated and disclosure forms submitted.

FEDERAL ICA CHECKLIST			
Contractor Name:		Deadline Contract Needed:	
Account Code		Term (dates) of Agreement:	
Funding Source:		Amount Allocated in Budget:	
Conference/Event:		Amount to be Paid to Vendor:	

	All contract packets must have the following attached:
☐	Cover Memo (explain project components)
☐	Contract (only one copy needed)
☐	W9 (new contractor only)
☐	Certificate of Insurance (COI), if applicable
☐	Verify contractor's rate does not exceed $650 per eight-hour day or $81.25 per hour
☐	Verify in SAM.gov contractor does not appear on General Services Administration List of Parties Excluded from Federal Procurement or Non-Procurement Programs
	All contracts must have the following additional items attached as well:
☐	Vendor Code of Ethics signed, dated and disclosure forms submitted
☐	If Contract exceeds $100,000 obtain and attach signed 7d and 7e forms (Lobbying Certification and Debarment)
☐	Documentation of competitive bidding analysis

Third mechanism - the Federal Vendor Contract Policy[15] requires the Vendor Code of Ethics be signed, dated and that the disclosure form is also executed. The provision reads as follows:

11. VENDOR CODE OF ETHICS

All contracts and engagement letters require that you attach a Vendor Code of Ethics. Be sure to verify the Code of Ethics is signed, dated and that the disclosure form is also executed. The Vendor Code of Ethics is part of the ICA.

As such, BGCA is confident that the vendors it uses will have a code of conduct in place that complies with the OJP Procurement Guide.

G. Response to OIG Recommendation Number 7

OIG RECOMMENDATION No. 7: Ensure Boys & Girls Clubs' staff complete a code of ethics certificate and disclosure statement form during the procurement process for all contracts.

BGCA RESPONSE: BGCA will have its staff complete a code of ethics certificate and disclosure statement form during the procurement process for all contracts.

BGCA will comply with the requirement for BGCA staff to complete a code of ethics certificate and disclosure statement form. As specifically noted by OIG on page 19 of the Draft Audit Report, BGCA has in place a Code of Ethics Certificate form and Code of Ethics Disclosure Statement form that addresses the grant code of conduct requirements.

BGCA understands and respects the OJP requirement that grantees maintain a written code of conduct for employees engaged in the awarding and administration of contracts.

It is the policy of BGCA to ensure that contracts are secured and administered with the highest level of integrity, and in adherence to all appropriate federal requirements.

BGCA requires all staff to comply with and disclose any potential conflicts through its BGCA Code of Ethics for Employees, which addresses conflicts of interest and other related ethics issues.

BGCA did not begin requiring an annual signed BGCA Code of Ethics for Employees document until 2009. Prior to 2009, the signed forms were required approximately every third year. Signed BGCA Code of Ethics for Employees documents were previously submitted for each FY award year during the audit period except for FY 2008 and FY 2012. For FY 2012, in lieu of the required signed document, all BGCA employees were required to participate in and successfully complete a BGCA-required online Business Ethics course and the Certificates of Completion were previously submitted for each ICA staff lead during FY 2012. For FY 2008, the BGCA Code of Ethics for Employees documents signed in 2006, which were in effect until FY 2009, were submitted for each ICA staff lead during FY 2008.

Applicable BGCA Process Enhancements

Several enhancements have been made to BGCA procedures to ensure that required Code of Ethics Certificate form and Code of Ethics Disclosure Statement forms are signed by all BGCA staff and available for audit review in a timely matter.

First mechanism - *Annually* Boys & Girls Clubs of America requires all staff review and sign the BGCA Code of Ethics Policy.[23]

Second mechanism – As an additional safeguard, appropriate staff in the BGCA Federal Grants Department review all contracts procured with federal funds and request copies of Code of Ethics Forms for all BGCA staff involved in the awarding and administration contracts procured with federal funds.

Third mechanism – The BGCA Federal Vendor Contract Policy[15] has been enhanced to include the following verbiage: "All employees engaged in the awarding and administration of contracts

procured with federal funds must have a current Code of Ethics Certificate form and Code of Ethics Disclosure Statement form on file in the BGCA Human Resources Department."

As such, BGCA is confident that the Code of Ethics and Code of Ethics Disclosure Statement forms required for BGCA staff involved in the procurement, awarding and administration of contracts will be executed and saved annually.

H. Response to OIG Recommendation Number 8

OIG RECOMMENDATION NUMBER 8: Ensure that Boys & Girls Clubs contractors include a dated signature and answer all questions for conflicts of interest included on the contractors' code of ethics form.

BGCA RESPONSE: BGCA ensures that its contractors include a dated signature and answer all questions for conflicts of interest through its Vendor Code of Ethics form.

BGCA agrees that its contractors should include a dated signature and answer all questions for conflicts of interest included in its Vendor Code of Ethics. As stated in the OIG Draft Audit Report on page 20, BGCA requires contractors to sign a vendor code of ethics form to help ensure the highest degree of ethical standards is met and there is no conflict of interest on the part of the contractors.

Applicable BGCA Process Enhancements
The following steps will be taken to ensure that these Vendor Codes of Ethics are fully and properly executed.

First mechanism - The Independent Contractor Agreement Using Federal Funds (Federal ICA) template has a Vendor Code of Ethics as Exhibit "A" of the template. See Exhibit "A" to the Federal Funds Independent Contractor Agreement.

Vendors will certify that this requirement is met and have an opportunity to disclose if the requirement may not be met for BGCA review. The disclosure form is also part of Exhibit "A" of the Federal ICA template.

Second mechanism - The Independent Contractor Agreement Using Federal Funds Checklist [25] has a box that must be checked stating the Vendor Code of Ethics was signed, dated and disclosure forms submitted.

FEDERAL ICA CHECKLIST			
Contractor Name:		Deadline Contract Needed:	
Account Code		Term (dates) of Agreement:	
Funding Source:		Amount Allocated in Budget:	
Conference/Event:		Amount to be Paid to Vendor:	

All contract packets must have the following attached:	
☐	Cover Memo (explain project components)
☐	Contract (only one copy needed)
☐	W9 (new contractor only)

☐	Certificate of Insurance (COI), if applicable
☐	Verify contractor's rate does not exceed $650 per eight-hour day or $81.25 per hour
☐	Verify in SAM.gov contractor does not appear on General Services Administration List of Parties Excluded from Federal Procurement or Non-Procurement Programs
All contracts must have the following additional items attached as well:	
☐	Vendor Code of Ethics signed, dated and disclosure forms submitted
☐	If Contract exceeds $100,000 obtain and attach signed 7d and 7e forms (Lobbying Certification and Debarment)
☐	Documentation of competitive bidding analysis

Third mechanism - Federal Vendor Contract Policy[15] requires the Vendor Code of Ethics be signed, dated and that the disclosure form is also executed. The provision reads as follows:

> 11. VENDOR CODE OF ETHICS
>
> All contracts and engagement letters require that you attach a Vendor Code of Ethics. Be sure to verify the Code of Ethics is signed, dated and that the disclosure form is also executed. The Vendor Code of Ethics is part of the ICA.

As such, BGCA is confident that the vendors it uses will have a properly executed Code of Ethics form on file for all grants.

I. Response to OIG Recommendation Number 9

OIG Recommendation No.9: Remedy the $76,015 in unsupported and unallowable costs charged to the national and tribal youth mentoring programs related to the billing and payment issues as follows:

1. **OIG Recommendation 9a.** Remedy the $66,287 in unsupported costs regarding vendors hired by FirstPic, to complete contract service contracts in which the Boys & Girls Clubs identified FirstPic as a sole source provider.

BGCA Response: BGCA does not concur that the $66,287 compensation paid to vendors were unsupported costs; however, BGCA does agree to remedy the concern with OJP.

Due to unanticipated staff challenges, the remaining staff would not have been able to complete the deliverables effectively and within a timely manner as planned, thus necessitating contracting on a limited basis with external vendors.

The $66,287 in question was compensation for three vendors to perform required IT systems development and data collection functions that were contract deliverables and integral to the successful delivery of the respective grants as submitted. The services of the contractors were documented and clearly aligned with FirstPic, Inc. contract deliverables. Each of the three contracts were well below the simplified acquisition threshold and it would not have been prudent to competitively bid given time constraints.

2. **OIG Recommendation 9b**. Remedy the $4,360 in unsupported costs regarding the remaining other direct costs in which FirstPic did not provide sufficient support for the costs billed and paid.

BGCA Response: BGCA does not concur that the $4,630 were unsupported costs; however, BGCA does agree to remedy the concern with OJP. Note: The $4,360 initially requested for remedy has now been adjusted by OIG to $5,630.

The costs in question were incurred by FirstPic and charged to BGCA. They were 12 miscellaneous individual charges necessary for grant deliverables and were documented and aligned with FirstPic, Inc. contract deliverables. The deliverables were consistent with the proposed program as outlined in BGCA's grant materials. BGCA will work with OJP to remedy these individual charges.

3. **OIG Recommendation 9c**. Remedy the $3,036 in unsupported costs regarding the 6-percent overcharge that FirstPic made to other direct costs under the National Mentoring Program awards.

BGCA Response. BGCA concurs with the recommendation to remedy the stated concern with OJP. FirstPic will be asked to refund the charge and will be remedied with OJP.

4. **OIG Recommendation 9d**: Remedy the $724 in unsupported expenditures billed by and paid to Metcalf Davis

BGCA Response: BGCA concurs with the recommendation to remedy the stated concern with OJP.

BGCA will remedy the amount with OJP. The travel expenses claimed by Metcalf Davis were considered reasonable and reimbursed. BGCA has already implemented the enhancement requiring supporting documents for all expense reimbursements invoiced.

5. **OIG Recommendation 9e:** Remedy the $827 in unallowable costs for the double payment of an invoice to FirstPic.

BGCA Response: BGCA concurs with the recommendation to remedy the stated concern with OJP.

There was duplicate payment of $827 to FirstPic. BGCA will request FirstPic to refund the duplicate charge and BGCA will remedy with OJP.

6. **OIG Recommendation 9f**: Remedy the estimated $511 in unsupported travel costs that was incurred for the site visit to Tulsa, Oklahoma, by Metcalf Davis in which the Boys and Girls Clubs reversed only the flat rate for monitoring a local club.

BGCA RESPONSE: BGCA concurs with the recommendation to remedy the stated concern with OJP.

The National Mentoring Program was charged with the travel expenses for a site visit to a Club which was subject to A-133 procedures. This was an oversight and BGCA agrees to remedy the $511 with OJP.

J. **Response to OIG Recommendation Number 10**

OIG Recommendation No. 10: Ensure that Boys & Girls Clubs implements procedures to avoid paying duplicate billings.

BGCA RESPONSE: BGCA has extensive procedures in place to ensure that no payments are made for duplicate billings. To ensure duplicate payments are detected there are procedures in place in the following areas:

- Adequate segregation of duties exist for setting up a new Vendor account. A new Vendor account is set up by one person and approved by another after matching the Tax ID per W-9 Form provided by the vendor, to ensure that there are no duplicate vendor accounts.
- A built-in software control in the accounting system is in place to verify all invoice numbers in a vendor account and flag an invoice with an identical invoice number.
- No invoices are entered in the system without an invoice number.
- A multiple-level scrutiny of the invoices and payments before the payments are mailed out.
- To further strengthen our internal controls, with immediate effect BGCA will require supporting documents for all expense reimbursement submitted by contractors. BGCA will review all the supporting documents and ensure that the expenses are duly supported for audit trail.

K. Response to OIG Recommendation Number 11

OIG Recommendation No. 11: Ensure that Boys & Girls Clubs does not commingle grant funds designated for separate programs and corrects its financial records to properly show whether the expenditures were incurred for the National Mentoring Program or Tribal Youth Mentoring Program.

BGCA Response: BGCA respectfully asserts that any reference to commingling of funds is more narrowly defined in the context of this one stated concern and is in no manner indicative of a pervasive or systemic weakness in BGCA financial systems, oversight and/or related checks and balances that are in place to ensure against the commingling of funds. BGCA's existing accounting systems require that a separate general ledger account is maintained for each award and expenses for respective awarded grants are recorded in the separate general ledger account, thereby ensuring the agency funds are not comingled. Additionally, monthly grant expense reports are scrutinized by managers to review for accuracy and ensure that only expenses relating to the award are charged.

To further strengthen the controls, effective January 2016 BGCA has instituted a procedure requiring a separate contract for each award and requiring the contractors to provide separate invoices for each contract. When a contract is awarded for multiple awards, the contractors are required to submit separate invoices for each award. This procedure will provide another level of control and further ensure expenses are appropriately charged to the correct funding source and avoid any potential commingling of funds.

III. CONCLUSION

Boys & Girls Clubs of America appreciates the decades of unwavering support from OJP, which has directly and significantly impacted the lives of millions of our country's youth, helping them develop into healthy, caring, and productive adults.

Throughout the three-and-a-half-year audit period, BGCA has cooperated fully with OIG with complete transparency. BGCA has taken the recommendations of the audit seriously and looks forward to working with OJP on a successful resolution.

BGCA has provided evidence and comprehensive documentation to support all of the stated recommendations. In particular, BGCA has fully demonstrated justification for the selection of all vendors used to support the generous funding it received. BGCA has also demonstrated its vendor processes were appropriate, including maintaining documentation and receiving sole source approval from OJP. While BGCA does not concur with all findings in the report, we have been and continue to be prepared to make whatever changes are necessary in every instance, including sole source awards under the simplified acquisition threshold.

Since the inception of the audit engagement commencing in 2012, BGCA, in partnership with OJP, has instituted enhanced internal controls and processes to further strengthen its procurement and accounting procedures. Moreover, BGCA views this process as a unique opportunity to demonstrate our core promise to the nation: to uphold the highest ethical standards, and act as responsible stewards of donor and taxpayer dollars.

BGCA looks forward to resolving this matter with OJP with the highest level of integrity, and working together to continue making a significant impact on our nation and its youth. Thanks to OJP's generous support over the years, and in the future, Boys & Girls Clubs have and will continue to deliver life-changing programs, services and outcomes resulting in positive futures for countless communities, families and young people, including:

- Millions more youth lives changed and saved
- Violence/crime reduction
- Improved academic achievement
- Positive impact on the health of our youth
- Increased citizenship and public service participation
- Significant economic impact on our nation.

As Boys & Girls Clubs of America continues its 156-year mission of service to our nation's youth, we appreciate and express deepest gratitude for our invaluable partnership with OJP.

Please contact me at your convenience if you have questions or concerns. Thank you again for your support and your consideration.

Sincerely,

Paul Sansone

Paul R. Sansone
Chief Financial Officer
Boys & Girls Clubs of America

APPENDIX 7

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

The Office of the Inspector General (OIG) provided a draft of this audit report to the Office of Justice Programs (OJP) and the Boys and Girls Clubs of America (Boys and Girls Clubs) for review and official comment. OJP's response is incorporated in Appendix 5 and the Boys and Girls Clubs response is incorporated as Appendix 6.[22] In response to our draft report, OJP concurred with our recommendations and, as a result, the status of the audit report is resolved. The Boys and Girls Clubs concurred with Recommendations 8 and 9 c-f and did not concur or did not state a position about the remaining recommendations. The following provides the OIG analysis of the responses and summary of actions necessary to close the report.

Analysis of the Office of Justice Programs' Response

In its response, OJP discussed a 2010 monitoring report of the Boys and Girls Clubs by the OJP Office of the Chief Financial Officer (OCFO). In this report, the OCFO identified two contracts in excess of the simplified acquisition threshold for which sole source justifications had not been submitted to OJP for prior approval. The OCFO directed BGCA to review the OJP Financial Guide for the proper process for seeking OJP approval of sole source awards above the simplified acquisition threshold. In response, the Boys and Girls Clubs provided what the OCFO considered to be an appropriate corrective action response consisting of sole source justifications for contracts greater than the simplified acquisition threshold.

During the audit, we reviewed OJP site visit reports for the Boys and Girls Clubs for the audit scope and did not identify the 2010 OCFO report. However, we contacted OJP officials during the audit to request supporting documentation for specific contracts we reviewed and to obtain clarification on OJP's process for approving sole source contracts. During our discussions, OJP officials made no references to the 2010 OCFO report.

Regardless of the 2010 OCFO report, we reviewed the sole source justifications for the two contracts reviewed by the OCFO and, as noted in our report, found those justifications to be insufficient.

Also, in its response to the draft audit report, OJP referenced the adoption of the new Office of Management and Budget (OMB) regulations at 2 C.F.R. Part 200

[22] The Boys and Girls Clubs' 48-page response to the draft audit report was accompanied by 622 pages of attachments pertaining to the recommendations. The response is contained at Appendix 6 but the 622-page attachment is not included in this final report because of the voluminous nature of those materials.

(Uniform Requirements), effective December 26, 2014, that provided new guidance relevant to the question of sole source procurement contracts. OJP stated that in its response to the draft report that:

> It is now very clear, for example, that simply because an instrument is identified by a grantee as a contract, that is not determinative as to whether that instrument will ultimately be considered to be a procurement contract subject to sole source justifications and OJP approval (if over the simplified acquisition threshold), or a subaward, which is approved via different process.

We note that all of the 45 contracts we reviewed were issued by the Boys and Girls Clubs as sole source contracts, and OJP was aware of these contracts. In addition, all contracts we reviewed were issued prior to the December 2014 effective date of the Uniform Requirements cited by OJP in its response. Consequently, we consider all of these instruments to be subject to sole source justifications and we believe it is clear that OJP should ensure the Boys and Girls Clubs, when intending to award sole source contracts, follow established requirements for sole source awards.

Analysis of the Boys and Girls Clubs' Response

In its response to the draft audit report, the Boys and Girls Clubs make numerous arguments disagreeing with our findings and recommendations. We have carefully reviewed the Boys and Girls Clubs' response as contained in Appendix 6 and the 622 pages of additional materials provided with the response. Based on our review we conclude our findings are accurate as written and that no revision to our report is required. However, we address here the two general objections (see pages 48 through 52 above) raised by the Boys and Girls Clubs regarding our audit results.

1. The Boys and Girls Clubs states that sole source contracts for more than the simplified acquisition threshold were approved and accepted by OJP. We agree that OJP approved the sole source contracts, and we discuss the problems with these approvals on pages 8 through 12 of the report. We note here that OJP's approval of these contracts does not alter our conclusion that the sole source nature of the contracts was not properly supported. We found that the Boys and Girls Clubs did not support the sole source justifications it submitted to OJP and, when we requested the Boys and Girls Clubs provide documentation to support the statements it made to OJP justifying the necessity of the sole source contracts, it was unable to do so. We further determined that the contracts did not meet the sole source criteria. While we believe that OJP can strengthen its assessment of proposed sole source procurements, grantees such as the Boys and Girls Clubs have an obligation to submit justifications for OJP's consideration and retain the supporting documentation. We also note that OJP concurred with recommendations related to sole source approvals and agrees to remedy the questioned costs.

2. The Boys and Girls Clubs states that the Department of Justice's regulations do not require maintaining documentation for sole source awards for less than the simplified acquisition threshold. This contention is addressed fully by OJP in its response to the draft audit report. We concur with the OJP response, which is quoted here in full.

> First, BGCA appears to have a misunderstanding as to record retention requirements applicable to grantees under 28 C.F.R. Part 70. The requirements in 28 C.F.R. § 70.44 required BGCA to establish and follow its own written procurement policies and procedures. There is evidence that BGCA had in fact created these policies and procedures, since we know of such a policy dated January 2007 and January 2013, and a current policy, dated October 2013, with updates made in May 2015, April 2016, and May 2016, which was included under Tab 15 in BGCA's response to the above-referenced draft audit report. The content of these policies is critical to this discussion since 28 C.F.R. § 70.53 required BGCA to maintain financial records (which would include procurement records) as part of its grant files to demonstrate compliance with its own written procurement policies and procedures, to include supporting documentation to justify its sole-source awards. Specifically, 28 C.F.R. § 70.53(b) states, "[f]inancial records, supporting documents, statistical records, and all other records pertinent to an award must be retained for a period of three years from the date of submission of the final expenditure report…."
>
> BGCA's procurement policies appear to include requirements for sole source justifications as established by its written procurement procedures; therefore, such files should have been maintained in BGCA grant files for a period of not less than three years following submission of the final financial accounting (i.e., the final Federal Financial Report (FFR)) for each particular grant. A quick review of OJP files for the eight grants reviewed by the OIG under this audit indicates that based on the submission dates of the final FFRs, the 3-year record retention rate for each of those grants would have expired after the November 27, 2012 audit initiation date. It is important to also understand that once BGCA had received the notice concerning the OIG audit, no records concerning those grants should have been destroyed. See 28 C.F.R. §70.53(b). Consequently, BGCA, therefore, should have been able to produce records as

part of its grant files, consistent with requirements under 28 C.F.R. §§ 70.44 and 70.53, to show adherence to its own written procurement policies and to justify any sole source procurements made during this time period.

Recommendation:

1. **Remedy the $505,148 in unsupported costs due to the absence of justification in the selection of contracts on a sole source basis.**

   Resolved. OJP concurred with our recommendation. OJP stated in its response that it will coordinate with the Boys and Girls Clubs to review and remedy, as appropriate, any such costs determined to be unsupported.

   The Boys and Girls Clubs did not concur with our recommendation and stated in its response that it was not obligated to maintain documentation to support a sole source award for less than the simplified acquisition threshold. However, 28 C.F.R. §70.53(b) requires BGCA to maintain financial records as part of its grant files to demonstrate compliance with its own written procurement policies and procedures, to include supporting documentation to justify its sole-source awards.

   This recommendation can be closed when we receive documentation that the $505,148 in questioned costs has been remedied.

2. **Remedy the $2,457,784 in unsupported costs due to inadequate justification in the selection of contractors on a sole source basis.**

   Resolved. OJP concurred with our recommendation. OJP stated in its response that it will coordinate with the Boys and Girls Clubs to review and remedy costs determined to be unsupported.

   The Boys and Girls Clubs did not concur with our recommendation and stated in its response that it was not obligated to maintain documentation to support a sole source award for less than the simplified acquisition threshold. However, 28 C.F.R. §70.53(b) requires BGCA to maintain financial records as part of its grant files to demonstrate compliance with its own written procurement policies and procedures, to include supporting documentation to justify its sole-source awards.

   This recommendation can be closed when we receive documentation that the $2,457,784 in questioned costs has been remedied.

3. **Ensure that the Boys and Girls Clubs implement procedures for conducting procurements that comply with the rules governing sole source awards; provide for open, free, and fair competition; and adequately document the procurement process, including market research, cost and price analyses, and the justification for any sole source award.**

   Resolved. OJP concurred with our recommendation. OJP stated in its response that it will obtain a copy of written policies and procedures that have been developed and implemented.

   The Boys and Girls Clubs did not state whether or not it concurred with our recommendation but stated that it always maintained procedures for conducting procurements that comply with the rules governing sole source awards. The Boys and Girls Clubs also stated that during the audit, significant enhancements were made to its Procurement Procedures Governing Contracts Awarded Using Federal Funds Policy to ensure compliance with rules that govern sole source awards. However, the revised policy was not provided for the OIG to review.

   This recommendation can be closed when we receive documentation that the Boys and Girls Clubs have implemented procedures for conducting procurements that comply with the rules governing sole source awards; provide for open, free, and fair competition; and adequately document the procurement process, including market research, cost and price analyses, and the justification for any sole source award.

4. **Ensure the Boys and Girls Clubs complies with the OJP Financial Guide requirement for explicit lobbying certification from contractors that grant funds have not and will not be used for lobbying activity.**

   Resolved. OJP concurred with our recommendation. OJP stated that it will coordinate with the Boys and Girls Clubs to obtain a copy of written policies and procedures that have been developed and implemented.

   The Boys and Girls Clubs did not state whether or not it concurred with our recommendation. In its response, the Boys and Girls Clubs stated it will comply with the DOJ Financial Guide requirement for lobbying certifications from contractors. The Boys and Girls Clubs referenced procedures in place to ensure that the required lobbying certification form will be signed and filed with the execution of any vendor contracts that exceed the $100,000 threshold. These procedures were not provided for our review.

   This recommendation can be closed when we receive documentation that the Boys and Girls Clubs complies with the DOJ Financial Guide requirement for explicit lobbying certification from contractors that grant funds have not and will not be used for lobbying activity.

5. **Ensure that the Boys and Girls Clubs and its contractors comply with the requirements of the OJP Financial Guide regarding the proper filing of the lobbying disclosure form.**

   Resolved. OJP concurred with our recommendation. OJP stated that it will coordinate with the Boys and Girls Clubs to obtain a copy of written policies and procedures, developed and implemented regarding the proper filing of the lobbying disclosure form.

   The Boys and Girls Clubs did not state whether or not it concurred with our recommendation. In its response, the Boys and Girls Clubs asserts that our finding is not accurate in the assessment of individuals who were not identified as lobbyists nor disclosed to the OJP. The Boys and Girls Clubs stated that it properly disclosed lobbyists and the individuals we identified did not perform lobbying activities related to specific grants. However, as noted in the OJP Financial Guide, grantees are required to report lobbying activities for all individuals who perform lobbying on its behalf. The Boys and Girls Clubs stated that it is confident that it will comply with the requirements of the OJP Financial Guide regarding the proper filing of the lobbying disclosure form.

   This recommendation can be closed when we receive documentation that the Boys and Girls Clubs develop and implement procedures to ensure compliance with requirements for filing all lobbying disclosures.

6. **Ensure that the Boys and Girls Clubs verifies that all contractors use a written code of conduct document with language that specifically addresses all of the requirements provided in the OJP Procurement Guide.** [23]

   Resolved. OJP concurred with our recommendation. OJP stated that it will obtain written policies and procedures, developed and implemented, to ensure the Boys and Girls Clubs of America verifies that all contractors use an appropriate written code of conduct.

   The Boys and Girls Clubs did not concur with our recommendation and stated in its response that it did not believe this requirement was established in the OJP Procurement Guide as being applicable to contractors. However, the OJP Procurement Guide, Chapter 12, Code of Conduct section is applicable to contractors and reads as follows, "Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts." We also note that the Boys and Girls Clubs further states that

[23] As of the date of this report, the DOJ Guide to Procurement Procedures was being updated and will replace the OJP Guide to Procurement Guide.

"Regardless, BGCA has taken several steps to meet the above recommendation for vendors" and that it "is confident that the vendors it uses will have a code of conduct in place that complies with the OJP Procurement Guide."

This recommendation can be closed when we receive and review documentation that the Boys and Girls Clubs established written policies and procedures to verify that all contractors use a written code of conduct document with language that specifically addresses all of the requirements provided in the OJP Procurement Guide.

7. **Ensure that the Boys and Girls Clubs' staff completes a code of ethics certificate and disclosure statement form during the procurement process for all contracts.**

   Resolved. OJP concurred with our recommendation. OJP stated that it will coordinate with the Boys and Girls Clubs to obtain a copy of written policies and procedures developed and implemented to ensure staff completes an appropriate code of ethics certificate and disclosure statement.

   The Boys and Girls Clubs did not state whether or not it concurred with our recommendation but stated in its response that staff will complete a code of ethics certificate and disclosure statement form during the procurement process for all contracts.

   This recommendation can be closed when we receive documentation that the Boys and Girls Clubs established procedures for its staff to complete a code of ethics certificate and disclosure statement form during the procurement process for all contracts.

8. **Ensure that the Boys and Girls Clubs contractors include a dated signature and answer all questions for conflicts of interest included on the contractor code of ethics form.**

   Resolved. OJP concurred with our recommendation. OJP stated that it will coordinate with the Boys and Girls Clubs to obtain a copy of policies and procedures developed and implemented to ensure proper completion of the ethics form.

   The Boys and Girls Clubs concurred with our recommendation and stated in its response that its contractors should include dated signatures and answer all questions for conflicts of interests; and steps will be taken to ensure that vendor codes of ethics are fully and properly executed.

   This recommendation can be closed when we receive documentation that the Boys and Girls Clubs communicated to its staff that contractors include a dated signature and answer all questions for conflicts of interest included on the contractor code of ethics form.

9. **Remedy the $76,015 in unsupported and unallowable costs charged to the National and Tribal Youth Mentoring Programs related to the billing and payment issues as follows.**

   a. **Remedy the $66,287 in unsupported costs regarding vendors hired by FirstPic, Inc. to complete contract service tasks in which the Boys and Girls Clubs identified FirstPic, Inc. as a sole source provider for those tasks.**

      Resolved. OJP concurred with this sub-part of our recommendation. OJP stated that it will coordinate with the Boys and Girls Clubs to review and remedy, as appropriate, the $66,287 in costs questioned as unsupported.

      The Boys and Girls Clubs did not concur with this sub-part of our recommendation and stated in its response that compensation paid to an external vendor to perform services for its contractor was supported. The Boys and Girls Clubs agree to work to remedy the concern with OJP.

      This sub-part can be closed when we receive documentation that the $66,287 in questioned costs has been remedied.

   b. **Remedy the $4,630 in unsupported costs regarding the remaining other direct costs in which FirstPic, Inc. did not provide sufficient support for the costs billed and paid.**

      Resolved. OJP concurred with this sub-part of our recommendation. OJP stated that it will coordinate with the Boys and Girls Clubs to review and remedy, as appropriate, the $4,630 in costs questioned as unsupported.

      The Boys and Girls Clubs did not concur with this sub-part of our recommendation and stated in its response that the $4,630 in questioned costs were incurred by its contractor for contractual services and charged to the Boys and Girls Clubs. The Boys and Girls Clubs agree to remedy the concern with OJP.

      This sub-part can be closed when we receive documentation that the $4,630 in questioned costs has been remedied.

   c. **Remedy the $3,036 in unsupported costs regarding the 6-percent overcharge that FirstPic, Inc. made to other direct costs under the National Mentoring Program awards.**

      Resolved. OJP concurred with this sub-part of our recommendation. OJP stated that it will coordinate with the Boys and Girls Clubs to review and remedy $3,036 in costs questioned as unsupported.

The Boys and Girls Clubs concurred with this sub-part of our recommendation and stated that it will work with OJP to remedy the costs.

This recommendation can be closed when we receive documentation that the $3,036 in questioned costs has been remedied.

d. Remedy the $724 in unsupported expenditures billed by and paid to Metcalf Davis.

Resolved. OJP concurred with this sub-part of our recommendation. OJP stated that it will coordinate with the Boys and Girls Clubs to review and remedy $742 in costs questioned as unsupported.

The Boys and Girls Clubs concurred with this sub-part of our recommendation and stated that it will work with OJP to remedy the costs.

This recommendation can be closed when we receive and review documentation that the $724 in questioned costs has been remedied.

e. Remedy the $827 in unallowable costs for the double payment of an invoice to FirstPic, Inc.

Resolved. OJP concurred with this sub-part of our recommendation. OJP stated that it will coordinate with the Boys and Girls Clubs to review the $827 in costs questioned as unallowable.

The Boys and Girls Clubs concurred with this sub-part of our recommendation and stated that it will work with OJP to remedy the costs.

This recommendation can be closed when we receive documentation that the $827 in questioned costs has been remedied.

f. Remedy the estimated $511 in unsupported travel costs that was incurred for the site visit to Tulsa, Oklahoma, by Metcalf Davis in which the Boys and Girls Clubs reversed only the flat rate for monitoring a local club.

Resolved. OJP concurred with this sub-part of our recommendation. OJP stated that it will coordinate with Boys and Girls Clubs to review the $511 in costs questioned as unsupported.

The Boys and Girls Clubs concurred with this sub-part of our recommendation and stated that it will work with OJP to remedy the costs.

This recommendation can be closed when we receive documentation that the $511 in questioned costs has been remedied.

10. Ensure that the Boys and Girls Clubs implements procedures to avoid paying duplicate billings.

Resolved. OJP concurred with our recommendation. OJP stated that it will coordinate with the Boys and Girls Clubs to obtain a copy of appropriate written policies and procedures developed and implemented.

The Boys and Girls Clubs did not state whether or not it concurred with our recommendation and stated it had extensive procedures to ensure duplicate payments are detected. The Boys and Girls Clubs also provided an overview of these procedures.

This recommendation can be closed when we receive documentation that supports how the Boys and Girls Clubs communicated procedures established to avoid paying duplicate billings to its staff.

11. Ensure that the Boys and Girls Clubs does not commingle grant funds designated for separate programs and corrects its financial records to properly show whether the expenditures were incurred for the National Mentoring Program or Tribal Youth Mentoring Program.

Resolved. OJP concurred with our recommendation. OJP stated that it will coordinate with the Boys and Girls Clubs to obtain a copy of written policies and procedures developed and implemented to prevent commingling.

The Boys and Girls Clubs did not state whether or not it concurred with our recommendation and stated that its existing accounting system requires that a separate general ledger to be maintained for each award's grant expenditures. In addition, managers review monthly grant expenditure reports for accuracy to ensure that only grant-related expenses are charged. The Boys and Girls Clubs also stated that in January 2016 procedures were established that require contractors with multiple awards to submit separate invoices for billed services to ensure expenses are appropriately charged to the correct award and to avoid commingling of funds.

This recommendation can be closed when we receive documentation that the Boys and Girls Clubs: (1) established, and communicated to its staff, procedures to avoid commingling of Federal funds ; and (2) corrected its financial records to properly show whether the expenditures were incurred for the National Mentoring Program or Tribal Youth Mentoring Program.

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