Office of
INSPECTOR GENERAL

Audit Report

Audit of Associated Management Services, Inc.
Wage Payment and Fringe Benefits

Report No. IG-03-98

UNITED STATES INTERNATIONAL TRADE COMMISSION

June 1998

INSPECTOR GENERAL

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, D.C. 20436

June 24, 1998

TO: THE COMMISSION

I hereby submit *Audit of Wage Payments By Associated Management Services, Inc.*, Report No. IG-03-98. This audit was conducted to determine if Associated Management Services, Inc., (AMSI) complied with Federal law governing wage and fringe benefits payments to contract employees.

The McNamara-O'Hara Service Contract Act of 1965, as amended (Act), requires contractors who receive a Federal award to pay employees under that contract in accordance with wage determinations that are issued by the Secretary of the Department of Labor. Additionally, the Act requires that contract employees receive a minimum of ten paid holidays per year.

The Commission entered into a contract with the Small Business Administration (SBA) on December 1, 1993, primarily for mail room and laborer services. SBA subcontracted with AMSI to perform the contract for the base year and extended the contract for four option years ending in FY 1998.

This audit was conducted by Dembo, Jones, Healy, Pennington & Ahalt, P.C. They examined AMSI wage and fringe benefit payments for FYs 1994 through FY1997. They found that AMSI underpaid 18 employees by more than $100 based on the combined wage and fringe benefits underpayment and maximum holiday underpayment. AMSI underpaid wages and fringe benefits totaling $7,051.46, and approximately $2,187.20 in holiday pay. Additionally, the auditors identified $940.89 in questioned costs. These costs were questioned because the amounts invoiced by AMSI exceeded the time charged by eight workers on their original time sheets.

We recommend that the Director of Administration notify AMSI of the need to pay wages and fringe benefits due, including holiday pay, to the contract workers. He should also recover the questioned costs.

An exit conference was held with the Director of Administration and procurement staff on April 15, 1998. The Director of Administration concurred with the findings.

On May 20, 1998, the Director of Administration requested that AMSI in accordance with the findings of the audit, pay employees for back wage payments and fringe benefits. Additionally, AMSI was requested to forward $940.89 in questioned costs to the Commission. On May 27, 1998, AMSI submitted a check to the Commission for $940.89. On June 5, 1998 AMSI provided proof of payment of $9,238.66 in wages and fringe benefits underpayments to 18 employees.

The Director of Administration submitted a response dated June 18, 1998 which is attached as an appendix to this report. All recommended actions were completed.

Jane E. Altenhofen

Jane E. Altenhofen
Inspector General

United States International Trade Commission

June 22, 1998

AUDIT OF WAGE PAYMENTS BY

ASSOCIATED MANAGEMENT SERVICES, INC.

AUDIT OF WAGE PAYMENTS BY
ASSOCIATED MANAGEMENT SERVICES, INC.

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INTRODUCTION AND SCOPE

An audit was conducted to determine if Associated Management Services, Inc. (AMSI) wage payments and fringe benefits paid to employees were in compliance with the McNamara-O'Hara Service Contract Act of 1965, as amended.

The McNamara-O'Hara Service Contract Act of 1965, as amended, requires contractors who receive a Federal award to pay employees under that contract in accordance with Wage Determinations that are issued by the Secretary of the Department of Labor (DOL). Additionally, the Act requires that contract employees receive a minimum of ten paid holidays per year, including Christmas and New Year's days.

The United States International Trade Commission (ITC) let a Fixed Price, Indefinite Delivery, Indefinite Quantity Contract (Contract) effective December 1, 1993, to the Small Business Administration (SBA) under the 8(a) program.[1] SBA subcontracted with AMSI as an "8(a) contractor" to fulfill and perform all the requirements of the Contract on behalf of SBA. The Contract (Contract No. ITC-CN-94-0001) consisted of the base year and four option years ending in fiscal year (FY) 1998. All options were exercised. ITC paid $659,600 to AMSI through September 30, 1997. $240,200 is currently budgeted for FY 1998. Pursuant to the Contract, AMSI has provided the services of a Supervisor/Mail Clerk, Assistant Supervisor/Mail Clerk, Mail Clerk, Duplicating Machine Operator, two Laborers, and a Truck and Driver. Optional services in the Contract include an additional Mail Clerk, Driver/Messenger, Chauffeur, Supply Clerk/Warehouse Technician, and Shuttle Vehicle and Driver. The majority of the workers supplied by AMSI were employees of AMSI and, in some cases, vendors were used.

The Contract is in the final option year and AMSI graduated from the SBA 8(a) program in November 1997. For the next fiscal year, ITC will be letting this contract through SBA's 8(a) Program. Since AMSI graduated from the 8(a) Program, AMSI will be ineligible to compete for the Contract for the next fiscal year.

The audit was conducted during February and March of 1998. Wage and fringe benefit payments were examined from the period of Contract inception through FY 1997. The Contract and its modifications, along with applicable Federal regulations, were all reviewed to determine the minimum wage and fringe benefit levels that AMSI was required to pay its workers. Clarification of issues pertaining to the documents was sought and obtained from enforcement officials at DOL's Employment Standards Administration, Wage and Hour Division. AMSI wage and fringe benefit

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[1] "Section 8(a) of the Small Business Act [15 U.S.C. 637 (a)] established a program that authorizes the SBA to enter into all types of contracts with other agencies and let subcontracts for performing those contracts to firms eligible for participation. The SBA's subcontractors are referred to as '8(a) contractors.'" FAR 19.8

records were examined and compared to the determined minimum requirements. The exceptions resulting from the comparison were calculated and summed by fiscal year.

The following documents were reviewed during the audit:

A. The Code of Federal Regulations (CFR) Title 29 (Labor) Part 4, Labor Standards for Federal Service Contracts and

B. The Contract and its Modifications.

Title 29 CFR Part 4 contains governing regulation of the McNamara-O'Hara Service Contract Act of 1965, as amended. Criteria in the regulations were examined to determine wage and fringe benefit eligibility requirements and methods of dispensation.

Copies of all DOL wage determination letters requested directly by ITC for the Contract were obtained for use as minimum wage standards.

ITC's Contracting Officer (CO) and the Contracting Officer's Technical Representative (COTR) were interviewed to obtain a description of the Contract operations and ITC responsibilities for oversight of AMSI labor practices.

AMSI policy documents regarding payroll and fringe benefits of employees corresponding to ITC FYs 1994 to 1997 were reviewed to determine specific wage and fringe benefit policies in existence during the period. AMSI officials were interviewed to determine AMSI's employee payment arrangements. Enforcement officials at DOL's Employment Standards Administration, Wage and Hour Division were contacted to corroborate the understanding of Federal regulations as applied to AMSI personnel practices.

AMSI invoices to ITC from inception of the Contract through the end of FY 1997 were reviewed. Invoice total dollar amounts were validated to ITC's Office of Finance and Budget payment records. From the AMSI invoices, each person whose services AMSI charged to the Contract during ITC FYs 1994 to 1997 was identified by name and title. A five-percent sample of invoices was judgmentally selected for verification of mathematical accuracy.

Original payroll registers and original timesheets were obtained from AMSI for each pay period invoiced under the Contract through September 30, 1997.

For those AMSI workers who charged time to the Contract, the following steps were performed:

A. each person's hours, and their corresponding position title, were compared from the AMSI invoice to original time sheets for the same period to determine agreement and

B. each pay-period payroll register was examined to determine if that person was directly paid by AMSI.

For those persons charged to the Contract and found on the AMSI payroll register for a specific payroll period:

A. the total hours documented on those employees' time sheets were compared to the payroll register to determine agreement;

B. the employees' hours and wage rates paid per the register were documented for each specific job title performed;

C. where the pay period contained an AMSI holiday, the payroll register was examined to determine if, and how much, the employee was paid for that holiday; and

D. the AMSI payment of fringe benefits was determined.

For each employee, both the wage rate and the total of the wage rate and the fringe benefit rate provided by AMSI per hour for each pay period were then compared to the DOL wage determinations.

For those persons charged to the Contract and not found on AMSI payroll register for a specific payroll period, each person's hours and corresponding title were compared from the AMSI/ITC invoice to AMSI vendor invoices.

Documentation was obtained from ITC indicating when the Government shutdown occurred. For the dates indicated, AMSI invoices were examined to determine if any of the service periods of the invoices included any of the shutdown dates. For any invoices so identified, AMSI time sheets were examined for persons charged in the invoices to determine the exact dates being charged. Documentation was then requested from ITC and AMSI to determine if ITC directly authorized any AMSI services to be provided during the Government shutdown.

Contract provisions were also examined to determine how any ITC workforce reductions would affect the invoicing of services rendered.

The audit was conducted in accordance with the 1994 Revision of the Government Auditing Standards promulgated by the Comptroller General of the United States, and all other relevant Federal Government accounting and audit regulations.

FINDINGS

CONTRACT

With few exceptions, each AMSI invoice represented services performed during the AMSI payroll period. Therefore, an AMSI employee's hours per each AMSI invoice agreed to an AMSI timesheet for the same period.

According to the provisions in the Contract, AMSI only is paid by ITC for services rendered; if employees do not work on the ITC Contract, ITC is not liable for payment toAMSI. This provision means that ITC does not pay for holidays, Government shutdown days, vacation days, sick days, and any other time not actually spent working on behalf of ITC.

ITC memorandums were provided which indicated that ITC employees were given furlough due to the Government shutdown on the following days:

- November 14, 1995 through and including November 17, 1995,
- December 18, 1995 through and including January 5, 1996, and
- Four days during the week of January 8, 1996 (due to inclement weather).

No other dates of Government shutdown were indicated as having occurred.

Labor Regulations (29 CFR Part 4, Subpart A, Standard 4.4) state that for any contract exceeding $2,500, ITC shall file with the Wage and Hour Division of DOL's Employment Standards Administration its notice of intention to make a service contract. These notices (Standard Form 98, Notice of Intention to Make a Service Contract, and Standard Form 98-A, a listing of employee classes and number of employees expected in the Contract) should be filed not less than 60 days (nor more than 120 days) prior to exercise of options or contract extensions.

However, when the Contract was examined, the 1996 and the 1997 FY Wage Determinations in the Contract were not obtained directly from DOLby ITC; these Determinations were directly provided by AMSI to ITC. When these findings were presented and confirmed by the ITC CO, the CO completed the Standard Forms 98 and 98-A and submitted them to DOL. DOL has since provided ITC the Official Wage Determinations for FYs 1996 and 1997. These Determinations were the same as the Contract "Information Copies" that were provided by AMSI.

For the ITC reduction in force that occurred in October of 1995, a modification was performed to the Contract to reduce the number of employees that AMSI provided ITC.

ITC OVERSIGHT RESPONSIBILITIES

According to the CO, ITC has the following responsibilities for oversight of the Contract:

A. ensure that the Contractor provides a Statement to ITC stating that the Contractor's employees are being paid in accordance with the DOL Wage and Determination;

B. compare the Contractor's employee wage-rates to the Wage Determination and ensure the wage rates are at least at the Determination levels; and

C. ensure that instructions to the Contractor for work to be performed are detailed in a Statement of Work.

WAGES AND FRINGE BENEFIT POLICIES

Descriptions of the AMSI benefit policies that were in effect during the examined Contract period were obtained from AMSI's policy manual and AMSI officials. Policies, which are perceived as exceptions to DOL standards, are described under the paragraph heading "WAGES AND FRINGE BENEFITS UNDERPAID."

All employees of AMSI who worked on the Contract were paid bi-weekly via the employee's choice of direct deposit or check. The employees on the Contract were classified as non-exempt, hourly-paid workers and were paid based on the specific titled job performed. When employees performed more than one titled job during a pay period, the same employee earned thewage rate set by AMSI for that titled job in that given pay period. The following types of remuneration were received:

- Straight Time
- Overtime
- Jury Duty
- Sick
- Vacation
- Holiday
- Bereavement

Of the listed remunerations, AMSI could only invoice for time productively spent working on behalf of ITC, namely Straight Time and Overtime. Vacation was earned in accordance with DOL Wage Determinations. Vacation for new employees and employees with less than five years experience at ITC received two weeks vacation prorated for the number of hours on payroll at AMSI for the previous year. This vacation was received commencing on the date of either their one year anniversary date working on behalf of ITC or as an employee of AMSI. Those who had

worked more than five years either on behalf of ITC or as an employee of AMSI received three weeks vacation. Bereavement leave and Jury Duty were paid, when authorized, for up to three days.

During the period of the Contract, the benefit plans changed at AMSI. From the inception of the Contract to March 30, 1995, the plan in place provided the following:

A. Paid health plan benefits for individual coverage, which calculated to $ .75 per hour in FY 1994 and $ .72 per hour for FY 1995 through March 31st;

B. Sick leave of 40 hours per year;

C. Holiday pay for all ten Federal holidays;

D. Up to three days each for Jury Duty, Bereavement, or Personal Leave days as authorized; and

E. Vacation Pay depending on length of service and eligible work time accumulated.

From March 31, 1995, through the end of FY 1997, the benefit plan in place (a Cafeteria Plan) provided the following coverage:

A. A fringe benefit amount predetermined at the beginning of the Contract year;

B. Holiday pay for all ten Federal holidays;

C. Up to three days each for Jury Duty and Bereavement days (Personal Leave discontinued) as needed; and

D. Vacation Pay depending on length of service and eligible work time accumulated.

The fringe benefit amount was allocated by the employee via the employee's benefit selections or, if so chosen by the employee, taken as an addition to their wage. The employee made these elections at the inception of the plan (or on their hire dates) by completing an Employee H & W Benefit Statement. These Statements disclosed the insurance coverage costs, fringe benefit dollars provided by AMSI, and amount of sick leave elected. The resulting computation of fringe benefit dollars provided, less cost of employee elections, were denoted and deducted from the employee's pay each pay period.

WAGES AND FRINGE BENEFITS UNDERPAID

Wage and Benefit Statements were obtained for all full-time employees to determine the amount of fringe benefits provided. For applicable employees, payments of fringe benefits were validated via examining payroll registers to ensure employee benefit deductions matched the applicable Employee H & W Benefit Statement.

The following policies of AMSI were interpreted as being in conflict with Labor regulations (29 CFR Part 4), and were verbally confirmed as being in conflict with an enforcement official of the Wage and Hour Division in DOL's Employment Standards Administration.

Cafeteria Plan Fringe Benefits Charged "Administrative Fees"

The fringe benefit amount to be provided under the Cafeteria plan was $ 0.90 per hour, based on a 2,080 hour year. However, effective on March 31, 1996, an administrative fee of five percent was charged to the $ 0.90 fringe benefit amount. This administrative fee (equal to $0.045 per hour) was deducted from the fringe benefit provided on the Wage and Benefit Statement.

Reduced Fringe Benefits When Paid As Wages

Some of the Contract employees elected minimal levels of insurance and sick-day coverage and took the remaining provided fringe benefit dollars as an increase to their hourly rates. Prior to converting the remaining fringe benefit to wage rates, the remaining amount was reduced arbitrarily by AMSI to reimburse AMSI for additional costs incurred (extra FICA, SUI, and workers compensation insurance premium) to pay the employee the fringe benefit as a wage.

Benefits Not Provided Immediately To Full-Time Employees

New employees were required to wait 30 days before being provided benefit coverage.

As a result of both the preceding policies mentioned and the payroll payments made by AMSI, shortages to the appropriate DOL wage determinations were noted for some of the wages paid and fringe benefits paid (or provided). The combined effect of improper wage and fringe benefit payments and AMSI policies for 36 workers over four fiscal years was a wage and fringe benefit underpayment totaling $7,205.66. Workers whose combined wage and fringe benefits underpayment and maximum holiday underpayment were less than $100 were eliminated due to immateriality. The remaining 18 workers had wage and fringe benefit underpayments totaling $7,051.46.

POTENTIAL HOLIDAY UNDERPAYMENT

In addition to the preceding AMSI policies, the following policy was also interpreted as being in conflict with Labor regulations (29 CFR Part 4), and the conflict was verbally confirmed with an enforcement official of the Wage and Hour Division in DOL's Employment Standards Administration.

No Fringe Benefits Or Holidays Paid To Floaters

Benefits were only provided to AMSI **full-time** employees. Other AMSI employees, who were only assigned temporarily to ITC when needed, were referred to as "floaters" and were neither provided fringe benefits nor holiday pay.

According to 29 CFR Part 4, an employee who performs any work during the workweek in which a holiday occurs is entitled to the holiday benefit. If the employee is a part-time or temporary employee, the employee is to receive the pro-rata portion of the holiday pay in relation to the amount of time worked the prior work week.

The maximum potential holiday underpayment was calculated using a full eight hours for those employees who did not receive holiday benefits during weeks worked on the Contract. Some employees may have been due less than a full eight hours if only a partial week was worked. The exact holiday underpayment was not calculated because the difference was considered immaterial.

Examination of AMSI records disclosed a potential holiday underpayment totaling $2,262.64 for 13 employees. By eliminating those workers whose combined wage and fringe benefits underpayment and maximum holiday underpayment were less than $100, the potential holiday underpayments totaled $2,187.20 for 12 employees.

Subsequent to the audit, AMSI officials calculated the exact holiday pay due for each of the workers identified as being underpaid. The total amount of the underpayment for all identified workers was calculated as $1,320.44. This calculation was not verified in the audit.

QUESTIONED COSTS

Questioned costs of $940.89 represent amounts invoiced by AMSI in excess of the time charged by eight workers on their original timesheets. These questioned costs were arrived at by taking the number of hours questioned and multiplying them by the hourly rate invoiced. The original employee timesheets were considered source documents; any subsequent documents summarizing original timesheet data were ignored.

FINDINGS

SUMMARY OF MATERIAL DOLLAR EXCEPTIONS NOTED

Exhibit 1 lists, by worker and fiscal year, the amount of Wages and Fringe Benefits Underpaid, Questioned Costs, and Potential Holiday Underpayment noted in the audit. A summary of the figures detailed on Exhibit 1 is as follows:

FY	Wages and Fringe Benefits Underpaid	Potential Holiday Underpayment	Questioned Costs
1994	$ 296.33	$ 78.88	$ 598.64
1995	1,761.01	872.88	275.27
1996	2,500.36	606.72	66.98
1997	2,493.76	628.72	---
Totals	**$ 7,051.46**	**$ 2,187.20**	**$ 940.89**

GOVERNMENT SHUTDOWN

For the period of the Government shutdown, ITC instructed AMSI to provide services for three days: December 18, 19, and 20, 1995. Assurances were given by ITC's COTR that AMSI was given approval to supply services during the three shutdown days. AMSI provided all services during the shutdown in accordance with the Contract and invoiced the services properly.

VENDOR PAYMENTS

Two vendors were used by AMSI on the ITC Contract. These vendors provided both personnel and trucks to AMSI for AMSI to provide to ITC. The vendors, Dynamic Concepts, Incorporated (DCI), and Government Movers, Incorporated (GMI), were paid less than $10,000 each from FY 1994 through the end of FY 1997.

Some of the AMSI invoices paid by ITC for Contract services rendered by DCI were provided at no direct cost to AMSI. As explained by AMSI officials, DCI sometimes provided personnel to AMSI gratis since AMSI also provided gratis services to DCI. The amounts invoiced to ITC are not included as questioned costs as the services were provided in accordance with the Contract.

Vendor's wage payments to their employees who worked on this Contract were not included in the scope of this audit and were not examined.

RECOMMENDATIONS

We recommend that the Director of Administration:

1. Request AMSI to pay wages and fringe benefits due toall Contract workers listed in Exhibit 1. The payment should include holiday pay at either the maximumamount calculated in the audit or the exact amount as determined by AMSI.

2. If AMSI does not provide evidence of paying contract workers, notify SBA of the improper payments.

3. Recover questioned costs from AMSI.

Exhibit 1

ITC-AMSI CONTRACT
SUMMARY OF EXCEPTIONS

Position Title	/-------WAGES and FRINGE BENEFITS UNDERPAID-------/					/-----POTENTIAL HOLIDAY UNDER-PAYMENT-----/					/---------	---------QUESTIONED COSTS--------			---------/
Worker	FY 1994	FY 1995	FY 1996	FY 1997	TOTAL	FY 1994	FY 1995	FY 1996	FY 1997	TOTAL	FY 1994	FY 1995	FY 1996	FY 1997	TOTAL
1	-	-	181.36	-	181.36	-	-	-	-	-	-	-	-	-	-
2	-	158.88	47.20	-	206.08	-	-	-	-	-	-	122.56	-	-	122.56
3	42.73	-	-	339.20	381.93	-	-	-	-	-	-	-	-	-	-
4	-	198.40	-	-	198.40	-	-	-	-	-	-	79.37	-	-	79.37
5	-	-	-	134.40	134.40	-	-	-	-	-	-	-	-	-	-
6	-	-	-	-	-	-	-	-	-	-	243.84	60.96	-	-	304.80
7	-	-	36.00	750.40	786.40	-	-	-	78.80	78.80	-	-	-	-	-
8	-	-	-	-	-	-	-	-	-	-	118.88	-	-	-	118.88
9	37.12	651.28	385.66	30.40	1,104.46	-	214.88	150.88	156.48	522.24	-	12.38	-	-	12.38
10	-	-	652.20	813.12	1,465.32	-	-	-	-	-	144.48	-	-	-	144.48
11	134.40	232.96	394.56	20.80	782.72	78.88	-	-	-	78.88	91.44	-	-	-	91.44
12	82.08	7.20	-	-	89.28	-	75.44	-	-	75.44	-	-	-	-	-
13	-	-	107.20	15.84	123.04	-	-	-	80.00	80.00	-	-	-	-	-
14	-	-	-	96.00	96.00	-	-	-	77.68	77.68	-	-	-	-	-
15	-	79.23	308.24	-	387.47	-	-	150.88	-	150.88	-	-	-	-	-
16	-	65.92	350.98	26.40	443.30	-	151.84	229.52	-	381.36	-	-	-	-	-
17	-	-	-	-	-	-	-	-	-	-	-	-	66.98	-	66.98
18	-	18.42	8.64	22.40	49.46	-	-	-	80.40	80.40	-	-	-	-	-
19	-	61.20	-	-	61.20	-	75.92	-	-	75.92	-	-	-	-	-
20	-	287.52	28.32	163.60	479.44	-	354.80	75.44	77.68	507.92	-	-	-	-	-
21	-	-	-	81.20	81.20	-	-	-	77.68	77.68	-	-	-	-	-
Grand Total	$ 296.33	$ 1,761.01	$ 2,500.36	$ 2,493.76	**$ 7,051.46**	$ 78.88	$ 872.88	$ 606.72	$ 628.72	**$ 2,187.20**	$ 598.64	$ 275.27	$ 66.98	$ -	**$ 940.89**

Appendix

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

June 18, 1998 **AD-V-67**

MEMORANDUM **Response requested by June 24, 1998**

TO: **Chairman Lynn M. Bragg**

FROM: **Stephen A. McLaughlin, Director**
Office of Administration

SUBJECT: **Administration Response to Draft Report on Audit of Associated Management Services, Inc. (AMSI) Wage Payment and Fringe Benefits**

On May 12, 1998, the Inspector General distributed copies of the above-referenced draft audit report. The Office of Administration concurs with the recommendations of the Draft Report and has completed all recommended actions. This final response must be approved by the Chairman.

On May 20, 1998, my office requested that AMSI pay employees for back wages and fringe benefits, in accordance with the findings of the audit. Additionally, AMSI was requested to refund $940.89 in questioned costs to the Commission. On May 27, 1998, AMSI submitted a check to the Commission for $940.89. On June 5, 1998 AMSI provided proof of payment of $9,238.66 in wages and fringe benefits to 18 employees.

If you have any questions regarding this response, or you need additional time to consider it, please call me at 205-3131.

Approve: ✓ **Disapprove:** ___

Lynn M. Bragg 6/19/98

Chairman, Lynn M. Bragg **Date**

cc: **Inspector General**
The Commission