

**OFFICE OF THE CHIEF INFORMATION OFFICER
CONTRACT AWARDS FOR AGENCY MISSION-CRITICAL SERVICES**

AUDIT REPORT NUMBER 6-30

SEPTEMBER 25, 2006



**U.S. Small Business Administration
Office of Inspector General
Washington, D.C. 20416**

AUDIT REPORT
Issue Date: September 25, 2006
Report Number: 6-30

TO: Stephen D. Galvan
Chief Operating Officer

/S/ original signed

FROM: Debra S. Ritt
Assistant Inspector General for Auditing

SUBJECT: Office of the Chief Information Officer (OCIO) Contract Awards for Agency
Mission-Critical Services

This report presents the results of our audit of contract awards for certain information technology services that are considered critical to the Small Business Administration's (SBA) mission. Our audit was initiated based on two anonymous complaints. One complainant alleged that circumstances surrounding nine 8(a) contract awards for mission-critical information technology services could result in future problems and/or criticism of the Agency because the contracts had been extended beyond their option-year performance periods, and several of the awardees no longer qualified as 8(a) firms. The second complainant alleged that four contracts to replace the nine contracts that had been extended were improperly awarded as 8(a) sole source contracts to 8(a) prime contractors teamed with the prior contractors, in violation of the Federal Acquisition Regulations (FAR), and that SBA misused the 8(a) sole source contract vehicle for the Agency's convenience. These four contracts, each of which had an approximate value of between \$2 to \$3 million, were for services related to database operations, legacy mainframe support, web content management, and web applications support.

To address the allegations made by the two complainants, we determined whether SBA followed the FAR and 8(a) regulations when: (1) anticipating the expiration of the nine contract awards and planning for the need to re-compete those awards, (2) extending contract awards beyond their option-year performance periods, and (3) awarding four sole-source interim replacement contracts.

Because two of the nine contracts identified by the complainants had been re-awarded, we limited our scope to the seven contracts that were extended beyond their performance periods. We performed an in-depth review of one awardee, [EXP . 6], which, based on discussions with the responsible program officials, was determined to be representative of the six other contracts. We also reviewed the four interim replacement contracts.

We examined emails, contract files, the FAR, 8(a) regulations, and data contained in the Federal Procurement Data System (FPDS). We interviewed one anonymous complainant and officials from OCIO and the Office of Administration (OA), the two responsible program offices. We performed all work for this audit at SBA headquarters between April and June 2006. The audit was conducted in accordance with Government Auditing Standards.

RESULTS

Based on reviews of contract files and discussions with responsible SBA officials, SBA did not properly plan for the re-competition of replacement contracts as the original contracts approached their expiration dates. Extending the OCIO contract awards beyond their performance periods did not violate the FAR or any SBA policies, or any identified Federal laws or regulations because it was in the best interest of the Agency to ensure that continuation of mission-critical services was provided under the contracts. Nonetheless, exercising these extensions was clearly not the best option, nor a desirable contracting practice.

Although 1-year 8(a) sole-source replacement contracts were eventually awarded, we are concerned that SBA may not complete the steps needed to re-compete these interim contracts before they expire in March 2007. We also found that while awarding the four sole source replacement contracts did not violate any Federal laws or SBA regulations, the awardees may have difficulty meeting certain 8(a) requirements related to the amount of work they must perform due to their teaming relationships with much larger firms. Finally, we found that SBA should have requested a current size certification for one firm prior to executing a task order for services as it appeared the firm no longer met the applicable size standard.

SBA Did Not Sufficiently Plan for the Procurement of OCIO Services

Our review of awardee files and discussions with officials in OCIO and OA disclosed that SBA did not adequately plan to re-compete the contracts that were expiring. For example, the original contract with [EXP . 6], a task order from the General Services Administration's Federal Supply Schedule (FSS), was effective October 28, 2003 and had a 1-year period of performance. According to a memo in the contract file, the company graduated from the 8(a) program on March 31, 2004, but the contract's period of performance was extended through March 31, 2006 in a series of nine contract modifications. Officials in OA said these modifications were necessary because steps to re-compete the original contract had not been completed before the existing contract expired. Furthermore, because services provided under the contract were critical for the Agency's client-server/web support, SBA could not afford to let the contract lapse without a replacement contract in place.

FAR 7.104 states that acquisition planning should begin as soon as the agency's contractual needs are identified and preferably well in advance of the fiscal year in which the contract award or order placement is necessary. Based on discussions with officials in OCIO and OA, the necessary planning had not been performed to have the contracts re-competed, despite those officials' awareness of the eventual contract expiration dates, because of inadequate communication and coordination between these two offices.

Because of insufficient planning, timely steps were not taken to have the contracts re-competed and awarded to new firms before the existing contracts expired. Our review of the [EXP . 6] files identified an additional \$1.6 million in SBA funds was awarded through the series of nine contract modifications described above as a consequence of this lack of planning. It is possible that the needed SBA services could have been provided at a lower cost or greater value if the procurements had been re-competed and awarded to successor 8(a) firms. Furthermore, eight of these contract modifications/extensions were made to [EXP . 6] even though it had graduated from the 8(a) program on March 31, 2004 and appeared to no longer be a small business. While these actions were not prohibited, they violated the spirit of small business contracting requirements. Furthermore, this insufficient planning, which led to the existing contracts being extended rather than re-competed, denied other 8(a) firms the opportunity to compete for, and possibly win, awards for these relatively large-dollar SBA contracts.

Extensions Did Not Violate Government Regulations but Indicate Need for Better Planning

We reviewed the FAR and SBA regulations and found no specific prohibition against taking the actions, as SBA did, to extend the original contracts using modifications. 13 CFR 124.514, *Exercise of 8(a) options and modifications*, indicates that a modification within the scope of the original contract may be executed when the company awarded the contract graduates from the 8(a) program or is no longer eligible, if it is in the best interest of the government. Based on our review of contract files and discussions with the responsible program officials, we concluded SBA would have had to cease mission-critical operations such as client-server/web support if OA officials had not executed the contract modifications. However, while we concluded that such actions were not in violation of any SBA policies and procedures, we noted that the sole reason the modifications were determined to be in the best interest of the government was because Agency officials did not sufficiently plan to re-compete and award new contracts to replace the eventually expiring originals.

Replacement Contracts did not Violate Government Regulations but Pose Other Challenges

In March and April 2006, four replacement contracts were awarded to successor 8(a) firms: [EXP . 6]. These awards were made after SBA senior management decided not to permit any further modification/extension actions of the original contracts because of size and 8(a) qualification concerns. Awarding these procurements as 8(a) sole source contracts does not violate any Federal laws or SBA regulations, as alleged by one of the complainants. Auditors remain concerned, however, that poor communication and coordination between officials in

OCIO and OA exists, thus precluding sufficient planning for, and execution of, a re-competition of these 1-year contracts by March 2007. While OCIO officials have developed new statements of work, and OA has issued solicitations, there are still many tasks that must be completed by OCIO and OA officials to get the new contracts in place.

The complainant alleged that SBA awarded 8(a) sole source replacement contracts without meeting exceptions in FAR 6.302-1 and 6.302-2 that it demonstrate “only one responsible source and no other supplies or services will satisfy agency requirements,” and that “the agency’s need for the supplies or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals.” What the complainant may not have realized, however, is that these exceptions do not need to be met according to FAR 6.302-5, which states that full and open competition need not be provided for when a statute expressly authorizes that the acquisition be made from a specified source, such as sole source awards under the 8(a) Program, per 15 U.S.C. 637. Furthermore, these contracts were all below the \$3 million threshold (for non-manufacturing concerns) for competing 8(a) procurements among eligible 8(a) firms, per Title 13 of the Code of Federal Regulations, Section 124.506.

The complainant also alleged that SBA was misusing the 8(a) sole source contract vehicle for its convenience, in effect awarding the contracts to teams formed by the existing incumbent contractors. We found that this allegation had some merit; with better planning, the contracts could have been offered and awarded to non-incumbent firms under 8(a) competition. Furthermore, we have concerns that because of their partnering relationships with much larger companies, the firms awarded these replacement contracts may have difficulty meeting an 8(a) requirement that the contracted firm incur at least half the personnel costs with its own employees in the performance of the contracts.

According to 13 CFR 125.6(a), *Prime contractor performance requirements (limitations on subcontracting)*, in order to be awarded an 8(a) contract, the 8(a) Participant must agree that: “In the case of a contract for services (except construction), the concern will perform at least 50 percent of the cost of the contract incurred for personnel and its own employees.” Auditors reviewed the offer from the 8(a) firm [EXP . 6] and determined that the firm would not be able to meet this 50 percent subcontracting limitations requirement unless changes were made to their proposal. An Office of General Counsel attorney who reviewed the contract had the same concerns and made comments to the contracting officer about the need to ensure that these performance requirements be met in finalizing the contract. The contracting officer communicated those concerns to an official of [EXP . 6], who submitted a letter days before the contract was finalized to confirm that his firm would be the prime contractor and would perform 51 percent of the work, thus meeting the standard.

If companies do not comply with all 8(a) procurement requirements while performing their contracts, the intent of the 8(a) program—to help eligible small businesses better compete in the American economy through business development—is undermined. Because of the potential for the awardees of the four interim replacement contracts to violate these 8(a) regulations, it is necessary for SBA procurement officials and the contracting officer’s technical

representative to carefully review the firms' monthly performance reports to ensure that they remain in compliance.

SBA Should Have Requested a Current Size Certification for One Firm

Documentation in [EXP . 6] contract file indicated that the firm may not have met the applicable size standard at the time of its initial award and for the subsequent contract modifications. Accordingly, SBA should have requested a current size certification from the firm.

When SBA placed its order for services, in October 2003, both [EXP . 6] proposal and a Dun & Bradstreet report included in the contract file showed 2001 revenues of greater than \$52 million, or more than twice the size standard of \$21 million for the contract's particular North American Industry Classification System (NAICS) code. Although the firm's proposal and the Dun & Bradstreet report only listed 2001 revenue, and a three-year average is required for size determinations, the reported revenues certainly indicate the firm may not have met the applicable size standard. Further, documentation in the contract file shows that in November 2003, the contracting officer requested that the responsible district office review the current size status of the firm. Despite the red flags and concerns regarding the size of the firm, we found no evidence of either SBA requesting the firm to recertify that it remained small or completing a size determination on the firm.

Although a company that certified it was small to obtain an FSS contract remains small for all task orders issued pursuant to the contract for the life of the contract, SBA could have requested that the firm provide a current size certification prior to placing its order for services. As a result, the Agency could have undertaken these procurement actions with confidence that it was assisting a small, 8(a) business.

In March 2004, the OIG recommended in our *Audit of SBA's Administration of the Procurement Activities of Asset Sale Due Diligence Contracts and Task Orders* (Report Number 4-16), that the Associate Deputy Administrator for Management and Administration (ADA/M&A) require FSS contractors classified as small businesses to certify their size for FSS orders exceeding \$500,000 to ensure the contractors fit within applicable size standards. The ADA/M&A partially agreed with the recommendation and responded that that it will be implemented by issuing internal guidance. Accordingly, there is no need to make another recommendation regarding the task orders described in this report as they predated the recommendation in Audit Report 4-16.

RECOMMENDATIONS

We recommend that the Chief Operating Officer ensure that:

1. The Chief Information Officer and the Associate Deputy Administrator for Management and Administration develop a plan for re-competing the four interim replacement contracts before the 1-year contracts expire on March 31, 2007.
2. Any deviations from the plan are reported to the Chief Operating Officer and the Assistant Inspector General for Auditing.
3. Increased scrutiny over the awardees of the four interim replacement contracts is jointly provided by the Chief Information Officer and the Associate Deputy Administrator for Management and Administration to ensure that they remain in compliance with 13 CFR 125.6.

SBA MANAGEMENT'S RESPONSE AND OIG'S EVALUATION OF MANAGEMENT'S RESPONSE

The Chief Operating Officer's response stated that OCIO completed a review of the OIG report and generally agreed with its recommendations. OCIO noted that planning for the re-compete of the referenced contracts will be conducted pursuant to SBA Information Notice 0000-1950, effective July 1, 2006, and that OCIO is on schedule to complete the timely award of the replacement contracts prior to March 31, 2007. The proposed actions are responsive to Recommendations 1 and 2, but do not specifically address Recommendation 3. SBA management's response is included as Attachment 1.

ACTIONS REQUIRED

Because the corrective actions proposed do not address Recommendation 3, we would appreciate receiving your written plans for resolving this open recommendation within 30 days from the date of this report. You may provide alternative courses of action that you believe would resolve the issue addressed by the recommendation. The recommendations in this audit report are based on the conclusions of the Auditing Division. The recommendations are subject to review, management decision and action by your office in accordance with existing Agency procedures for audit follow-up and resolution.

Please provide us your management decision for each recommendation within 30 days. Your management decisions should be recorded on the attached SBA Forms 1824, "Recommendation Action Sheet," and show either your proposed corrective action and target date for completion, or explanation of your disagreement with our recommendations.

Should you or your staff have any questions, please contact Robert G. Hultberg, Director, Business Development Programs Group at (202) 205- [EXP . 6].

Attachments



U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

Attachment 1

DATE: September 18, 2006

TO: Debra S. Ritt
Assistant Inspector General for Auditing

FROM: Stephen D. Galvan EXP6
Chief Operating Officer

SUBJECT: Office of the Chief Information Officer (OCIO) Contract Awards for
Agency Mission-Critical Services

The Office of the Chief Information Officer (OCIO) has completed a review of the Office of the Inspector General Report and generally agrees with the proposed OIG recommendations. The OCIO has been actively engaged, working closely with the Associate Deputy Administrator for Management and Administration, Office of Procurement and Grants (OPGM) to timely complete the required statements of work and the review of resulting vendor proposals to award competitive replacement contracts for the four 1-year interim directed BA contracts. Because of OPGM direct involvement in this overall effort, OCIO is on schedule to complete the timely award of the replacement contracts prior to March 31, 2007.

The planning for the re-compete of the referenced contracts will be conducted pursuant to the requirements of Information Notice # 0000-1950, effective 7/1/2006.

Because of the critical nature of the contracts to supporting the agency's information technology infrastructure, the OCIO has been briefing the Chief Operating Officer (COO) on the ongoing procurement efforts during the quarterly OCIO scorecard meeting along with other OCIO status updates. If significant deviations are identified that impact the schedule, they will be immediately brought to the attention of the COO and, where appropriate, to the OIG. In the future the COO will be conducting quarterly status meetings with OCIO and M&A specifically to review contract award status.

Should you or your staff wish to discuss the overall status of the replacement procurements, please contact Mr. Charles McClam at (202) 205- EXP 6
Mr. Ronald Whalen at (202) 205 EXP 6

cc: Christine H. Liu
Chief Information Officer

Lewis Andrews
ADA, Management & Administration
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