



U.S. Small Business Administration
Office of Inspector General
Washington, DC 20416

AUDIT RELATED
MEMORANDUM REPORT

Issue Date: September 29, 1998

Number: 8-8-H-006-025

TO: William A. Fisher, Acting Associate Administrator, Office of Minority Enterprise Development

Peter L. McClintock
FROM: Peter L. McClintock, Assistant Inspector General for Auditing

SUBJECT: Audit Related Memorandum - GSA Kansas City 8(a) Sole Source "IDIQ" Contracts Awarded Under GSA's FAST Program

The Auditing Division performed a limited review of 157 sole-source 8(a) contracts awarded by the Federal Telecommunications Service of the General Services Administration in Kansas City, Missouri (GSA-KC). The purpose of this review was to determine whether the contracts complied with the Federal Acquisition Regulation (FAR), SBA regulations and statutory requirements. This review was limited in that we only confirmed the details on a limited number of these contracts and accepted the details provided by GSA-KC on the remainder.

BACKGROUND

GSA's Federal Acquisition Services for Information Technology (FAST) program is a rapid procurement buying service managed by GSA for use by Federal agencies in buying commercially available off-the-shelf information technology software, equipment, services and non-complex services. SBA accepted a requirement into the 8(a) Program allowing GSA-KC, through SBA, to contract with 8(a) companies under FAST so Federal buyers could competitively acquire non-complex integration services through these 8(a) companies.

As of March 1998, however, GSA-KC had awarded 157¹ sole source, indefinite delivery/indefinite quantity (IDIQ) contracts to 39 8(a) companies

¹ Information concerning the extent and value of the awards was provided to us by GSA. We have not confirmed whether these are all the sole source IDIQ 8(a) contracts, or that all of these contracts were awarded.

through the FAST program. Some of these companies received up to six contracts in information technology areas. Cumulatively, these contracts had a maximum value of \$555 million. For the contracts reviewed, each had a maximum value pennies below the statutory threshold for competitive procurements in the 8(a) program. The law requires that service contracts greater than \$3 million and manufacturing contracts greater than \$5 million be competed (see 15 United States Code § 637(a)(1)(D)(i)(II)).

RESULTS

We concluded that GSA should not have awarded, and SBA should not have accepted, these 157 sole source IDIQ 8(a) contracts into the 8(a) program for the following reasons:

- (1) They did not meet FAR requirements for IDIQ contracts. FAR requires that IDIQ contracts (a) identify a realistic maximum quantity based on prior consumption or other means which can be specified as a quantity or dollar value; (b) guarantee a minimum quantity based on the amount the Government is fairly certain to order, which can be specified as a quantity or dollar value; and (c) fulfill a recurring need. These contracts (a) did not identify realistic maximum quantities, but merely used dollar thresholds slightly below the competitive thresholds; (b) used a minimum guaranteed amount from other awards as there was no certainty anything would be ordered and, on at least three contracts, did not include any minimum guarantee; and (c) were not based on recurring needs.
- (2) They did not comply with SBA's regulation that 8(a) contracts have a requirement, i.e., a procuring activity will acquire goods or services from the contract. These contracts had no requirements at the time they were awarded, and GSA-KC was not certain anything would be purchased.
- (3) They may have provided a loophole whereby procuring offices could circumvent the competitive requirement by dividing one requirement into multiple contracts, which as a whole could exceed the sole source limits of 15 USC § 637. GSA-KC awarded up to six contracts in related areas, with a not-to-exceed value up to \$22 million in sole source contract authority, to each 8(a) company.

During our review, SBA's Washington District Office (WDO) received two additional GSA-KC offerings with a cumulative value not to exceed \$6 million. After these issues were discussed with WDO officials, these offers were not accepted into the 8(a) Program.

Upon being notified of these issues, your office drafted a Procedural Notice to provide clarification on the FAST Program. The draft Notice directed

SBA district offices to stop accepting offers of these sole source IDIQ contracts, and stated:

FOIA Ex. 5

Your office also sent a letter to GSA requesting they stop making these offerings to the 8(a) Program. Final issuance of the Procedural Notice and your letter to GSA should preclude SBA district offices from receiving and accepting any more of these inappropriate offers into the 8(a) Program.

The Procedural Notice and GSA letter, however, are only prospective. No actions were taken on the awarded contracts even though you determined that they were "... contrary to the FAST Program's provisions and to the business development goals of the 8(a) Program."

Recommendations

We recommend that you take the following actions:

- 1A Identify, in coordination with GSA, any other inappropriately awarded sole source 8(a) IDIQs.
- 1B Develop and implement an appropriate agreement with GSA which ensures that (1) no additional orders are placed against any inappropriately awarded sole source 8(a) IDIQs and (2) no options are exercised on them.
- 1C Finalize the Procedural Notice to the SBA District Offices clarifying that sole source IDIQ contracts are not allowed under FAST.
- 1D Do not accept the two additional GSA-KC offerings for sole source 8(a) IDIQs made during the audit. (Action has already been taken on this recommendation as these offers were not accepted into the 8(a) Program.)

MANAGEMENT COMMENTS AND OIG ANALYSIS

The Acting Associate Administrator, Office of Minority Enterprise Development (AA/MED), made two substantive comments to our draft report. A summarization of these comments and our analyses follows.

Management Comment

The AA/MED stated that our interpretation of 13 CFR 124 that every contract have a clearly defined "requirement" may be improper. The AA/MED gave an example where ". . . IDIQ contracts are used when an ordering agency is unsure how much of an item it will require."

Evaluation

Our interpretation of 13 CFR 124 did not state that a contractual requirement had to be clearly defined, only that something will (not may) be acquired. An IDIQ contract is appropriate when an agency is unsure of how much of an item it will order, but is fairly certain to order at least a minimum amount, i.e., there is a "requirement." We believe that this paragraph of the report is correct as written, and no changes were made.

Management Comment

The AA/MED was not sure that it would be appropriate for SBA to instruct GSA to cease placing orders against any inappropriately awarded contracts or exercise the options on them.

Evaluation

There was no disagreement with our conclusion that these contracts were inappropriately awarded, and the AA/MED has taken steps to stop future award of similar contracts. We believe that since the existing contracts were inappropriately awarded, orders should not be placed against them. Given the AA/MED's hesitation to advise GSA, we have changed Recommendation 1B from "advise GSA not to place orders against any inappropriately awarded sole source 8(a) IDIQs or exercise the options on them" to "develop and implement an appropriate agreement with GSA that ensures that . . ." orders aren't placed against these contracts and no options are exercised.

* * * * *

The finding in this memorandum is the conclusion of the Auditing Division. The finding and 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 decisions 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 an explanation of your disagreement with our recommendations.

Should you or your staff have any questions, please contact Victor R. Ruiz, Director, Headquarters Operations at (202) 205-7204.

Attachments



DRAFT SBA PROCEDURAL NOTICE
SBA Procedural Notice

TO: Regional Administrators, District Directors, Assistant
District Directors for Minority Enterprise Development
(ADD/MEDs)

CONTROL NO.:

SUBJECT: Clarification on the Purpose and Intent of the Federal
Acquisition Services for Information Technology
(FAST) Multiple Awards Schedule (MAS) Program.

EFFECTIVE:

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EXPIRES:

**SBA Form 1353.2 (12-93); Use 4-93 Edition Until Exhausted
Must be accompanied by SBA Form 58**

This form was electronically produced by Elite Federal Forms, Inc.

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DRAFT SBA PROCEDURAL NOTICE

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William A. Fisher
Acting Associate Administrator for
Minority Enterprise Development



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

JUN 5 1992

[FOIA EX. 6]
Director, National FAST Program
5203 Leesburg Pike
Suite 1100
Falls Church, Virginia 22041

Dear Mr. Garmon:

It has been brought to my attention that the Kansas City Regional Office of the U.S. General Services Administration (GSA) has awarded sole source 8(a) contracts for which the original offer letters referenced Federal Acquisition Services for Technology (FAST), but were inconsistent with the procedures for the FAST Program developed and agreed upon by GSA and the U.S. Small Business Administration (SBA). Unlike the competitively awarded Indefinite Delivery/Indefinite Quantity (IDIQ) contracts executed under the FAST Program, over thirty 8(a) firms each have been awarded as many as six of these contracts at or very near the competitive thresholds, using various services and manufacturing SIC codes. This practice, in effect, has established multiple sole source IDIQ vehicles with combined maximum ordering ceilings substantially in excess of the 8(a) competitive thresholds for sole source contracts. We have provided additional guidance to our field offices to end this practice.

Overall, the FAST Program has been working relatively well, and we applaud GSA's efforts to provide federal agencies with an efficient vehicle for purchasing quality products and services related to the ever changing landscape of information systems integration. However, awards issued in the manner described above may serve as a "loophole" to the 8(a) competitive process.

We have advised our field offices to closely review all offers of 8(a) requirements that reference the FAST Program. To further avoid the appearance of abuse of the statutory 8(a) competitive threshold and GSA's successful FAST Program, we request that you instruct your purchasing/contracts personnel to discontinue the practice described in this letter.

In advance, I appreciate your attention to this matter. Should you require additional information, please feel free to contact me on (202) 205-6412.

Sincerely,

William A. Fisher
Acting Associate Administrator for
Minority Enterprise Development

cc [FOIA EX. 6]

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