



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20005

INSPECTOR GENERAL
FOR TAX
ADMINISTRATION

September 27, 2005

MEMORANDUM FOR COMMISSIONER, WAGE AND INVESTMENT DIVISION
CHIEF, AGENCY-WIDE SHARED SERVICES

Pamela J. Gardiner

FROM: Pamela J. Gardiner
Deputy Inspector General for Audit

SUBJECT: Office of Audit Comments Concerning Management's Response to the Audit Report, *A Test of the Private Sector's Ability to Provide Tax Law Telephone Assistance Did Not Produce Sufficient Information to Support a Competitive Sourcing Decision* (Audit # 200330043)

This memorandum presents our concerns with the Internal Revenue Service's (IRS) response to the subject final audit report, issued on July 8, 2005. The IRS management response was received on July 19, 2005.

In summary, the stated objective of the IRS' Toll-Free Tax Law Services Test was to determine if a private vendor could deliver equal or superior quality in responding to tax law inquiries, as compared to the level of quality achieved by IRS resources. A second objective was to assess the public's reaction to receiving responses to tax law inquiries from a commercial vendor rather than the IRS. We concluded the Test results were not reliable and the data collected would not reasonably support any decision regarding the capabilities of a private vendor. Consequently, in relation to the Test objective, the IRS did not realize the expected benefit of the \$675,140 it paid the vendor.

We recommended the Deputy Commissioner for Operations Support and the Commissioner, Wage and Investment (W&I) Division, rescind the September 2004 decision and eliminate use of the private-vendor Test results as justification for any decision regarding the merits of using the Office of Management and Budget (OMB) Circular No. A-76 competitive sourcing process¹ to determine the most efficient and cost-effective toll-free tax law telephone services provider. To ensure any future studies of competitive sourcing of the Toll-Free Tax Law Telephone Operation produce more

¹ The IRS customized its competitive sourcing process into distinct phases. The first phase identifies functional activities that are classified as commercial. The second phase, Business Case Analysis, determines if a commercial activity will be formally placed in the IRS Competitive Sourcing Program.

reliable and useful results, we also recommended the Chief, Agency-Wide Shared Services (AWSS), expand the *IRS Guide to Competitive Sourcing* to require future studies to conform to a structured research design model and data collection protocol; require creation of an evaluation plan that predefines performance standards with target performance values and composite scores that constitute success; involve the IRS Research Division in the review of the design plan and data collection procedures, prior to performance of any tasks; and require executive-level approval of the research design plan prior to implementation.

To minimize the risk or appearance of unfairness in the competitive sourcing process related to any future study of the toll-free tax law telephone services, we recommended the Commissioner, W&I Division, and the Chief, AWSS, require any future Evaluation and Source Selection team members and Source Selection Official to sign a statement certifying they have no personal impairments that inhibit their ability to make a fair and impartial decision regarding the vendor proposals. We also recommended the Commissioner, W&I Division, and Chief, AWSS, ensure any future solicitation related to the Toll-Free Tax Law Telephone Operation contains no expressed or implied requirements that private vendors use current IRS methodologies in proposing solutions to the requirements in the solicitation.

Management's Response: The Commissioner, W&I Division, and the Chief, AWSS, disagreed with our recommendation to rescind the September 2004 decision because the IRS does not plan to pursue a Business Case Analysis (BCA) of the Toll-Free Tax Law Telephone Operation. They also did not agree with our recommendation to require submission of a personal impairment statement by Evaluation and Source Selection personnel that participate in any future acquisition related to the toll-free tax law telephone services because they believe IRS source selection procedures adequately prevent conflicts of interest.

The Commissioner, W&I Division, and the Chief, AWSS, did not state whether they agreed or disagreed with our recommendation that action be taken to ensure any future solicitation(s) related to the Toll-Free Tax Law Telephone Operation do not require use of IRS methodologies. They commented the IRS uses performance-based contracts that define desired outcomes and the IRS provides training to employees who write the contracts. They believe these factors substantially address the intent of our recommendation.

The Chief, AWSS, agreed to update the *IRS Guide to Competitive Sourcing* to include standards for valid research studies in consultation with the Office of Research, Analysis, and Statistics at the IRS.

Office of Audit Comment: We are encouraged by the IRS' decision to implement standards for performing valid research studies. However, we are concerned that the IRS response did not reflect a commitment to base a decision about whether to thoroughly evaluate the Toll-Free Tax Law Telephone Operation for competitive sourcing potential upon reliable information obtained by valid research methods. As

discussed on pages 6 through 9, 12, and 13 of our report,² the IRS' decision to not pursue a BCA was not based on an industry-accepted research test model that compared similar tax law skill levels, and the data collected during the Test were not statistically valid. Furthermore, page 3 of our report underscores a potential dilemma among internal stakeholders and indicates no consensus was reached regarding the Test results because the W&I Division recommended conducting a subsequent test while the Competitive Sourcing Office recommended completing the BCA prior to making any final decision.

We do not agree with the IRS' position that personal impairment statements from future Evaluation and Source Selection personnel are not warranted in the event the IRS issues a subsequent solicitation for toll-free tax law telephone services. The Federal Acquisition Regulation (FAR)³ states, Federal "Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in Government-contractor relationships." Although OMB Circular No. A-76 and the IRS' procurement policies contain procedures for preventing conflicts of interest in the source selection process, these procedures do not address the unique situation created when the IRS performed a test competition that was not properly designed to achieve the test's stated objective. As discussed on pages 5, 9, and 10 of our report, the IRS mandated the participating vendor's use of its Probe and Response Guide method for answering tax law inquiries instead of permitting the vendor to develop and use its own response methodology. Therefore, the vendor's capabilities were not fairly portrayed by the Test configuration or its results. If the vendor that participated in the Test should submit a proposal in response to any future solicitation involving the Toll-Free Tax Law Telephone Operation, we still believe the IRS should employ additional safeguards to ensure the vendor's perceived performance on the Test does not become a factor in future evaluation and source selection decisions.

We are also concerned that the IRS response did not reflect a commitment to ensuring inappropriate deviations from the FAR do not occur in future acquisitions. Although the IRS states that it uses performance-based contracts, pages 10 and 11 of our report document our finding that the IRS did not adhere to this practice in developing the Statement of Work for the Test. The IRS response also asserts the vendor could have developed other methods for meeting the accuracy standards. However, the IRS report on the Test stated the IRS mandated use of the Probe and Response Guide and the vendor did not have an opportunity to develop its own probe and response system. We highlighted this issue on pages 5, 9, and 10 of our report. In performing research studies, the research administrator has complete responsibility for ensuring any tests are performed in a manner that will not introduce a bias into the test results. As discussed on pages 6 through 9 of our report, the IRS did not adequately fulfill its

² *A Test of the Private Sector's Ability to Provide Tax Law Telephone Assistance Did Not Produce Sufficient Information to Support a Competitive Sourcing Decision* (Reference Number 2005-30-049, dated July 2005).

³ 48 C.F.R. pt 1-53 (2002).

responsibility as the Test administrator, and it did not require the vendor to provide information about the staff the vendor hired.

Finally, we disagree with the degree of weight given the issue of taxpayer concerns about privacy and confidentiality by the IRS in its response. We recognize the IRS is responsible for safeguarding taxpayer privacy and confidentiality; however, taxpayers are not required to provide any personal account information to receive assistance with their tax law questions. Furthermore, Congress enacted legislation in the American Jobs Creation Act of 2004⁴ that gave the IRS the authority to contract with private collection agencies to collect unpaid Federal taxes. Taxpayer accounts placed with these agencies will involve disclosure of personal information to contractor employees. Despite taxpayer privacy and confidentiality concerns, the IRS issued a solicitation in April 2005 that will be used to select private collection agencies to participate in its debt collection initiative. Therefore, we do not believe this issue established a valid reason for terminating the IRS' evaluation of the Toll-Free Tax Law Telephone Operation for competitive sourcing potential.

Although we continue to believe our recommendations are valid and should be followed, we do not plan to elevate our disagreement to the Department of the Treasury for resolution.

Please contact me at (202)622-6510 if you have questions or Curtis W. Hagan, Assistant Inspector General for Audit (Small Business and Corporate Programs), at (202) 622-3837.

cc: Director, Competitive Sourcing OS:A:C

⁴ Pub. L. No. 108-357, 118 Stat. 1481 (2004).