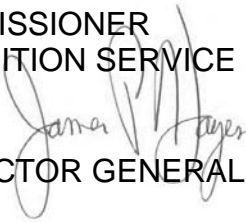




October 14, 2011

MEMORANDUM FOR MICHAEL GELBER
REGIONAL COMMISSIONER
FEDERAL ACQUISITION SERVICE (9Q)

FROM JAMES P. HAYES 
REGIONAL INSPECTOR GENERAL FOR AUDITING (JA-9)

SUBJECT Audit Memorandum: Limited Review of Task Order
9Q0ZDWIS003 Funded by the American Recovery and
Reinvestment Act of 2009

During our oversight of American Recovery and Reinvestment Act (Recovery Act) obligations within the Acquisition Services Fund, we identified a number of issues involving the subject task order that we believe warrant your attention. Your response to our draft memorandum is included in its entirety as Attachment 1. In addition, a summary of your comments that required a response are included in the body of the memorandum, followed by the Office of Inspector General (OIG) response.

Background and Scope

On September 30, 2010, the Federal Acquisition Service's (FAS), Pacific Rim Region Client Support Center awarded this sole-source¹ hybrid task order² at a value of \$670,498.70.³ The task order had a base period covering September 20, 2010, through April 9, 2011, and was to be performed in two phases. Phase 1 provided services to: (1) uninstall computers, peripherals, and ancillary equipment from the GSA Central Office building; (2) pack the equipment for shipment to "swing space" to be used during the modernization of the GSA Central Office building; and (3) unpack and reinstall the equipment to its functional state at the "swing space." Phase 2 provided services that were optional and were never funded. Therefore, we limited our review to the phase 1 services.

¹ The award of this task order as a sole-source procurement is allowable under FAR Part 19.8—Contracting with the Small Business Administration (The 8(a) Program), as it is under the \$4 million competition requirement.

² The task order included both firm-fixed price and labor-hour portions.

³ Of the total task order value, \$468,498.70 was funded by the Recovery Act.

Inadequate Price Analysis

The Contracting Officer (CO) did not perform an adequate price analysis for the task order. While the CO found the individual labor rates to be fair and reasonable, the CO did not evaluate the labor mix or the level of effort for the entire task order. Pacific Rim Regional FAS management believes the level of analysis for this task order was sufficient based on the use of pre-negotiated 8(a) STARS GWAC labor rates; however, in accordance with Federal Acquisition Regulation (FAR) 15.404, at a minimum, the technical analysis should examine the need for the types and quantities of labor hours and the labor mix. Without an analysis of the labor mix and level of effort, the overall cost of the task order cannot be deemed fair and reasonable. Additionally, per FAR 15.3, competition normally establishes price reasonableness and a comparison of proposed prices will usually satisfy the requirement to perform a price analysis. Therefore, a price analysis is particularly important given this task order was not subject to competition.

In addition, the Independent Government Estimate (IGE), which was used as a tool to establish price reasonableness, was not prepared independently. The IGE was prepared after the submission of the contractor's proposal and used discounted contractor rates that were almost identical⁴ to the discounted rates in the contractor's proposal. Given that the IGE was developed with information furnished by the contractor, it was not independent and should not be relied upon for establishing price reasonableness. Pacific Rim Regional FAS management asserts that the IGE was only one of the tools used to assist the CO in determining price reasonableness. However, as shown above, the price analysis performed was not adequate. Given that this task order was not subject to competition, the IGE was not prepared independently, and the labor mix and level of effort were not evaluated, the CO cannot be assured that the total price of the task order is fair and reasonable.

Management Comments

In its September 26, 2011, response to our draft memorandum, Pacific Rim Regional FAS management stated that their acquisition methodology utilizing a small disadvantaged business concern is not to be interpreted as a sole-source procurement, but rather a bona fide statutory exemption. In addition, they believe the phrase within the memorandum "Given that the task order was awarded sole-source, the [IGE] was not prepared independently, and the labor mix and level of effort were not evaluated, the CO cannot be assured that the total price of the task order is fair and reasonable" should be modified based on documentation provided regarding this issue.

The additional documentation provided by management includes: (1) the IGE we comment on in this memorandum, (2) another IGE not previously provided to the OIG (see Figure 1 below) and (3) four iterations of the contractor's proposal. Management

⁴ The average difference between the Phase 1 rates in the contractor's proposal and the discounted rates contained in the IGE was \$0.30 per hour. The greatest difference was \$0.72 per hour while the smallest difference was \$0.01 per hour.

states that the additional IGE “support[s] the evidentiary record that the Government Estimate was prepared prior to consummation of the contract/task order award.” In addition, management provided the four iterations of the contractor’s proposal to demonstrate “that limited labor mix and comparisons were accomplished by the Contracting Officer through various proposal iterations from the contractor.”

Figure 1 – Independent Government Estimate

IGE for IT Move Management	
IT Move Support to Swing	\$233,340
IT Move Support for Internal Consolidation	\$121,925
Network Surge Support	\$34,735
TOTAL	\$390,000

Office of Inspector General Response

As stated in FAR Subpart 19.8—Contracting with the Small Business Administration (The 8(a) Program), contracts may be awarded to the SBA for performance by eligible 8(a) firms on either a sole source or competitive basis. As this was not awarded on a competitive basis, we used the term sole source to describe the procurement. We recognize that awarding the task order sole source is allowable under the 8(a) STARS GWAC, as it is under the \$4 million threshold for competition requirements. Based on your comments, we included additional language to reflect that this is allowable in the background and scope section. However, we did not remove the language entirely as we want to emphasize the increased importance of a thorough price analysis since there was no competition involved with this task order. We also modified the language in the phrase you refer to in your response to reflect this; however, as discussed below, our findings related to price reasonableness remain.

The IGE shown in Figure 1 does not contain a date nor provides support for the lump sum dollar values for each task. Therefore, this additional documentation does not demonstrate that a government estimate was prepared prior to receiving the contractor’s proposal. In addition, regardless of when it was prepared, it is not an adequate tool to determine price reasonableness given the lack of detail. Our finding that the initial IGE we reviewed was not prepared independently remains.

We recognize that the four iterations of the contractor’s proposal provided include changes to the labor categories and the number of hours. However, this is not evidence

that a limited review of the labor mix and level of effort was accomplished by the CO. There is no evidence of the CO's evaluation and we cannot determine the reason the changes were made to the proposal based on the documentation provided. Therefore, in conjunction with the finding that the IGE was not prepared independently, our finding that the CO did not evaluate the labor mix and level of effort for the entire task order remains.

No Determinations and Findings or Ceiling Value

The CO did not prepare a determinations and findings (D&F) for the labor-hour portions of the task order or establish a ceiling value for the task. Pacific Rim Regional FAS management contends that the hybrid structure of this task order negates the need for a D&F. However, in accordance with FAR 16.6, a labor-hour task order may only be used if the CO prepares a D&F that no other contract type is suitable and that the contract contains a ceiling price that the contractor exceeds at its own risk. Further, FAR 16.1 states that each contract file shall include documentation showing the reason for selecting an "other than firm-fixed price" contract. The FAR does not suggest that hybrid contracts be excused from the D&F or ceiling value requirements. While this task order is not solely labor-hour, risks remain because the contractor has little incentive to control costs and operate efficiently. This risk becomes greater when a ceiling value is not set because there is no limit to the amount the Government may have to pay for these services. Without a D&F justifying the use of an "other than firm-fixed price" contract and a ceiling value for the labor-hour portions of the task order, FAS cannot demonstrate that it obtained the best value for GSA.

Management Comments

FAS concurs that a ceiling value was not established on the labor-hour portion of the task order and stated that this was because they contemplated that this portion would not be funded. In addition, management contends that since the task order is primarily firm-fixed price (FFP), this combined structure does not require a D&F document. FAS management states that if the OIG can provide statutory or regulatory support for this, they would modify their current practice. It is FAS' position that proper procedures were followed in compliance with the FAR, operational guidance, and the GWAC Ordering Guide.

Office of Inspector General Response

While the FAR does not explicitly require a D&F for hybrid task orders, we maintain that it also does not exclude hybrid task orders from the D&F requirement. Additionally, the 8(a) STARS ordering guide states that if not using a fixed-price order type, FAR 16.601(d) requires contracting officers to document the rationale. The D&F is especially important given that, per the solicitation, the original intent was to award the entire task order as FFP. When the contractor proposed labor-hour portions, the CO should have documented his/her consideration to add labor-hour portions to the task order. Regardless of our interpretation of D&F requirements, preparing a D&F is in the best

interest of the government and at the very least should be a best practice because of the increased risk on labor-hour portions of task orders.

Delayed Contracting Officer's Technical Representative Certification

The Contracting Officer's Technical Representative (COTR) and alternate COTR on this task order were not certified until more than 8 months after the task order was awarded. FAS Management stated that although the COTRs were not certified, they possessed the requisite knowledge, abilities, and hands-on experience to successfully execute their responsibilities as COTRs. Per the March 1, 2008, Office of Federal Procurement Policy memorandum "Federal Acquisition Certification for Contracting Officer Technical Representatives," all GSA COTRs appointed to a contract must be certified no later than 6 months from their date of appointment. As the COTR is responsible for managing and measuring contract performance in addition to providing technical direction, an uncertified COTR may not be able to adequately administer the contract.

Management Comments

FAS concurred in this finding.

Inaccurate and Incomplete Documentation

The task order file contained both inaccurate and incomplete documentation. We identified the following deficiencies:

- The Form 300 incorrectly states that this task order is a logical follow-on;
- The Form 300 was not signed until 9/30/10; however, the period of performance began 9/20/10;
- The basic Recovery Act funding document and amendment 1 are incomplete;
- Amendment 1 to the Recovery Act funding document contains incorrect information; and
- The Memorandum of Understanding contained errors in the accounting code.

In accordance with FAR 4.801, the documentation in the files shall contain all contractual actions and shall be sufficient to constitute a complete history of the transaction. Without accurate and complete task order documentation, the contracting officer may not be able to fully support all contracting actions taken on the task order.

Management Comments

FAS concurred in this finding.

Conclusion

This memorandum was prepared to assist you in identifying ongoing procurement issues. As such, we have no formal recommendations. We appreciate the support provided during this review. If you have any questions about this memorandum, please contact Lindsay Mough, Audit Manager at (703) 603-0269.

Distribution List

Pacific Rim Regional Commissioner, Federal Acquisition Service (9Q)

Federal Acquisition Service Audit Liaison (Q)

Assistant IG for Auditing (JA)

Deputy Assistant IG for Investigations (JID)


Attachment 1



GSA Pacific Rim Region

September 26, 2011

MEMORANDUM FOR JAMES P. HAYES
REGIONAL INSPECTOR GENERAL FOR AUDITING (JA-9)

FROM: MICHAEL GELBER 
REGIONAL COMMISSIONER
FEDERAL ACQUISITION SERVICE (9Q)

SUBJECT: FAS Management Responses to draft OIG Audit Memorandum
Limited Review of Task Order 9Q0ZDWIS003 funded by the
American Recovery and Reinvestment Act of 2009

Thank you for your support and spirit of collaboration in the review of the subject task order. FAS overall agrees with your office's conclusion as noted in the September 6, 2011 memorandum. There are a few points of clarification we would like to address below.

Please note that these positions are in concert with and supplement our previous responses provided to your office on July 25, 2011, including information from our discussion during the Exit Briefing conducted on September 14, 2011.

1. Inadequate Price Analysis

As articulated during the Exit Briefing on September 14 and in the July 25 response, the reasonableness of the price analysis is a Contracting Officer's business judgment. FAS' acquisition methodology was to utilize a small disadvantaged business concern, which we have previously conducted business. This decision is not to be interpreted as a "sole source" procurement, which falls under the aegis of FAR Part 6, but rather a bona fide statutory exemption permitting these firms business development opportunities (as subcontractors to the US Small Business Administration) through acquiring Federal contracts.

In addition, the 8(a) STARS Program enumerates the rates and labor categories for all the contractors within the various IT functional areas. Please note that competition and

Attachment 1 (continued)

prices are evaluated at two stages in the procurement: during the GWAC solicitation/evaluation phase and at the task order level.

Finally, as noted previously and per our discussion on September 14, please find attached documentation which demonstrates that limited labor mix and comparisons were accomplished by the Contracting Officer through various proposal iterations from the contractor.

2. Independent Government Estimate

Attached are documents from the Program Office which support the evidentiary record that the Government Estimate was prepared prior to consummation of the contract/task order award.

Through our ongoing business relationship with the 8(a) contractor on various IT aspects required as integral in the expeditious relocation of Central Office, FAS acknowledges that it possesses a significant breadth of historical, pricing, and proposal information relative to this organization. It was clearly a legally-sufficient approach to utilize this firm via the 8(a) STARS Program in order to accomplish this portion of the work; moreover, the Government had a fiduciary advantage in possessing institutional knowledge concerning this contractor.

Based on the information contained herein and previously mentioned in our initial response, it is recommended that the phrase contained within the OIG's draft memorandum, specifically, "Given that the task order was awarded sole-source, the IGCE was not prepared independently, and the labor mix and level of effort were not evaluated, the CO cannot be assured that the total price of the task order is fair and reasonable" be modified based on FAS' documentation regarding this issue.

3. No Determinations and Findings on Ceiling Value

While FAS concurs that ceiling values were not established on the Labor-Hour (LH) portion of the task order because FAS contemplated that they would not be funded (in addition, this portion was funded by non-ARRA funds), the overall "hybrid contract" is primarily a firm-fixed price (FFP) contract. This combined structure does not require a Determinations and Findings document, as this was a small portion of the overall requirement. If your office can provide statutory or regulatory support that "all portions that are not FFP *should* have a justification and a ceiling value to reduce risk to the government," we will modify our current practice. It remains FAS' position that proper procedures were followed which are in compliance with the FAR, operational guidance and the GWAC Ordering Guide.

Attachment 1 (continued)

4. Delayed Contracting Officer's Technical Representative Certification

FAS concurs with the OIG's review and has taken appropriate steps to ensure that COTRs and CORs are properly certified within 6 months of contract/task order award.

5. Inaccurate and Incomplete Documentation

FAS concurs with the OIG's assessment, with the exception of the documents provided herewith. As noted in the Exit Briefing and our initial response to the OIG's inquiry, we are taking measures in order to correct these administrative oversights. We anticipate that these steps will be accomplished no later than October 31, 2011.

Thank you for the opportunity to respond to the review of this task order. Should you have any questions, please feel free to contact Les Yamagata at (415) 522-4520 or at les.yamagata@gsa.gov.