

**THE PLANNING AND AWARD OF THE WIDE
AREA NETWORK OPTIMIZATION
CONTRACT USING RECOVERY ACT FUNDS**

Report Number: ROM 10-17

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U.S. Small Business Administration
Office of Inspector General

Memorandum

To: Darryl K. Hairston
Associate Administrator for Management and
Administration
/s/ Original Signed

From: Debra S. Ritt
Assistant Inspector General for Auditing

Subject: The Planning and Award of the Wide Area Network Optimization Contract Using
Recovery Act Funds, ROM 10-17

Date: June 29, 2010

This report presents the results of our audit of the Small Business Administration's (SBA's) planning and award of the Wide Area Network (WAN) Optimization contract funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act). This is the second in a series of audit reports related to our ongoing audit of Information Technology (IT) contracts awarded with Recovery Act funds. Our first report addressed the planning and award of the Customer Relationship Management contracts.¹

The purpose of the audit was to determine whether in making the contract award, SBA: (1) adopted an acquisition plan for the procurement that promoted competition and provided for measurable outcomes; (2) ensured contractors were qualified and that contracts contained required Recovery Act provisions; and (3) properly posted the solicitation and contract award to meet transparency requirements of the Recovery Act.

To accomplish the first objective, we reviewed Office of Management and Budget (OMB) guidance on the Recovery Act, pertinent Federal Acquisition Regulations (FAR), SBA Standard Operating Procedure (SOP) 00 11 1H, *Small Purchases, Contract, Grants, & COOP Agreements*, and the WAN Optimization contract file. We also interviewed personnel from the Office of the Chief Information Officer (OCIO) and the Office of Business Operations. To address the second objective, we reviewed the WAN Optimization contract file to determine whether contracting personnel determined the contractors were qualified. We also reviewed the contract to determine whether all contract-related Recovery Act requirements were included. To address the third objective, we reviewed the

¹OIG ROM 10-16, *SBA's Planning and Award of the Customer Relationship Management Contracts*, June 29, 2010.

WAN Optimization contract file and information from the Federal Business Opportunities (FedBizOpps) website, the Federal website for contract solicitation and award postings, to determine whether the award was properly publicized. We conducted our audit between October 2009 and April 2010, in accordance with *Government Auditing Standards* prescribed by the Comptroller General of the United States.

BACKGROUND

SBA received \$20 million in Recovery Act funds for improving, streamlining, and automating information technology systems related to lender processes and lender oversight. SBA used about \$843,000 of the \$20 million to procure WAN optimization or acceleration technology solutions. The WAN Optimization project was implemented to automate and streamline lender processes through the expansion of SBA's IT telecommunications infrastructure through improved network bandwidth.

SBA's OCIO, which is the sponsoring program office, planned to implement the WAN Optimization project in two phases: (1) a pilot phase limited to the installation of the WAN expansion technology at two sites; and (2) a full deployment phase if the desired results were realized during the pilot phase. SBA officials also planned to award the contract as a sole-source set-aside under the 8(a) Business Development Program.² On August 26, 2009, SBA awarded a firm-fixed price/time and materials contract on a sole-source basis to Acuity, Inc., an 8(a) firm, for approximately \$843,000 to provide support services and equipment needed for WAN optimization. The contract was classified, using the North American Industry Classification System, as Computer Systems Design Services.

In February and April 2009, OMB issued guidance³ for carrying out activities funded by the Recovery Act. The guidance emphasizes that agencies should use competitive procedures to the maximum extent possible and structure acquisitions to deliver meaningful and measurable outcomes.

RESULTS

While SBA requires acquisition plans for all procurements to be approved prior to award, the WAN Optimization contract was awarded without an approved acquisition plan. The Associate Administrator (AA) for Management and Administration (M&A) stated that he did not believe an approved plan was

² The SBA 8(a) program was created to assist eligible small disadvantaged business concerns to compete in the American economy through business development.

³ OMB Memoranda, *Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009*, February 18, 2009, and *Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009*, April 3, 2009.

required because the value of the contract was below what he believed was the required threshold for plan approval. SBA's acquisition strategy for the procurement also did not promote competition because SBA chose to issue the contract on a sole-source basis under the 8(a) Program, however the FAR allows an agency to award a contract for services on a sole-source basis to a company in the 8(a) Program if the total value is \$3.5 million or less. The 8(a) Program helps agencies maximize small business participation in Federal contracting which, in turn, helps small businesses maximize the economic benefit they provide to their communities. Further, SBA officials developed measurable outcomes to evaluate successful achievement of the WAN Optimization objectives and ensured that the contractor was not on the Federal *Excluded Parties List*. Finally, SBA officials properly posted the contract award on FedBizOpps.

The WAN Optimization Contract Was Awarded Prior to Approval of the Acquisition Plan

We determined that the contracting officer awarded the Acuity contract for the procurement of WAN optimization to Acuity on August 26, 2009, prior to obtaining an approved acquisition plan. FAR Part 7, *Acquisition Plans*, Subpart 103 (FAR 7.103) states that Agency Heads shall prescribe procedures for reviewing and approving acquisition plans and revisions to those plans. According to SOP 00 11 1H, *Small Purchases, Contract, Grants, & COOP Agreements*, no procurement action shall be taken prior to the approval of the planned acquisition by the Associate Deputy Administrator (ADA) for M&A. The title of this position was subsequently changed to the AA for M&A.⁴ In addition, the SOP requires that acquisition plans for purchases exceeding \$500,000 must be approved by nine other key SBA officials.⁵

Although SBA officials developed an acquisition plan for the WAN Optimization project, the acquisition plan was not approved by any of the required parties. The contract file contained no evidence that the acquisition plan was reviewed by the AA for M&A. According to the AA for M&A, an approved plan was not required because the value of the Acuity contract was below what he believed was the threshold that would require signature approval. Further, while there was evidence that the other required individuals participated in the acquisition process, they had not signed the Acuity acquisition plan's coordination and approval sheet.

⁴ In August 2007, the title "Associate Deputy Administrator for Management and Administration (ADA/M&A)" was amended to "Associate Administrator, Office of Management and Administration (AA/M&A)" to align SBA's management titles to those commonly used across the Federal Government. No changes in the responsibilities, reporting relationship, or other regulatory duties of the office were made.

⁵ Acquisitions \$500,000 and above require comprehensive acquisition plan approval by the Agency's: Planner; Program Office Official; Contract Specialist; Contracting Officer; Procurement Center Representative; Head of Contracting Office; Senior Procurement Executive; Chief Information Officer; Small Business Specialist; and ADA/M&A. In addition, the acquisition plan requires concurrence from the Competition Advocate, and the Office of General Counsel.

Because the WAN Optimization acquisition plan was not approved by the appropriate personnel, the contracting officer should not have awarded the contract to Acuity.

SBA's Acquisition Strategy Promoted the 8(a) Program

OMB guidance for carrying out activities funded by the Recovery Act emphasized that agencies should use competitive procedures to the maximum extent possible for acquisitions made with Recovery Act funds. This guidance also recognizes that small businesses play a critical role in stimulating economic growth and creating jobs, and that qualified 8(a) procurements can be noncompetitively awarded up to the \$3.5 million threshold under FAR 19.805. Instead of competing the award for the WAN Optimization project, Agency officials chose to award a sole-source contract to Acuity, an 8(a) firm. Under the rules of the 8(a) Program, the FAR allows procurements for services under \$3.5 million to be non-competitively awarded without soliciting a request for proposal on FedBizOpps, which significantly decreases the procurement time and supports small disadvantaged business. Consequently, the award of the WAN Optimization project was consistent with FAR and OMB guidance for the use of Recovery Act funds.

SBA Met Other Requirements of the Recovery Act

OMB's April 2009 guidance requires that agencies include special terms and conditions, beyond standard practice, in contracts made with Recovery Act funds and that awards be made to qualified contractors. We determined that the contract award for the WAN optimization included the required contract provisions and that steps were taken to ensure the selected contractor was not on the Federal *Excluded Parties List*.

Further, OMB's guidance stresses that agencies should structure acquisitions to result in meaningful and measurable outcomes that are consistent with agency plans and goals of the Recovery Act. The evaluation criteria for award should also include those that bear on the measurement and likelihood of achieving the outcomes. We determined that SBA officials developed the following measurable outcomes to evaluate successful achievement of the WAN Optimization objectives:

- Improve response time by 30 percent; and
- Limit average bandwidth utilization during peak times to 80 percent.

RECOMMENDATION

Because the recommendation made in our previous report on the Customer Relationship Management Contracts addresses the deficiencies noted in this audit, we are making no additional recommendations in this report. We previously recommended that the AA for M&A take steps to ensure that no procurement action is taken prior to the approval of an acquisition plan.

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

On May 14, 2010, we provided a draft of the report to SBA's Office of Management and Administration for comments. On June 18, 2010, the AA for M&A provided written comments, which are contained in their entirety in Appendix I. Management generally concurred with the reported findings and provided comments regarding the Agency's compliance with OMB guidance on the acquisition approach agencies should use for Recovery Act contracts.

Management Comments

Comment 1

Management took exception to the OIG's statement that SBA's acquisition approach did not promote competition as required by the Recovery Act and OMB guidance. Management believes the Recovery Act does not limit procuring agencies' ability to use all available small business contracting programs, including sole-source contracting through the 8(a) Program. In Management's view, the sole issue in this matter is whether or not this particular contract was suitable for award through the 8(a) Program.

OIG Response

The OIG agrees that SBA's actions for awarding the WAN Optimization contract were in accordance with FAR and Recovery Act guidance on 8(a) competition and added language to clarify the OIG's findings.

OIG Response

Management comments were responsive to our recommendation.

We appreciate the courtesies and cooperation of the Office of Management and Administration during this audit. If you have any questions concerning this report, please call me at (202) 205-^[FOIA ex. 2] or Riccardo R. Buglisi, Director, Business Development Programs Group at (202) 205-^[FOIA ex. 2]

APPENDIX I. Management Comments



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

DATE: June 18, 2010

TO: Debra S. Ritt
Assistant Inspector General for Auditing

FROM: Darryl K. Hairston [FOIA ex. 6]
Associate Administrator
Office of Management and Administration

SUBJECT: Draft Report on the Planning and Award of the Wide Area Network
Optimization Contract Using Recovery Act Funds, Project No. 10501

Thank you for providing the opportunity to comment on this draft report.

With respect to your statement that SBA's acquisition approach did not promote competition as required by the Recovery Act and Office of Management and Budget (OMB) guidance, the Recovery Act did not limit procuring agencies' ability to use all available small business contracting programs, including sole source contracting through the 8(a) BD program. Pub. L. No. 111-5, Title XVI, Section 1610(a), 123 Stat. 115, 304; OMB Memorandum, *Initial Implementing Guidance for the American Recovery and Reinvestment Act of 2009*, February 18, 2009, p. 40; OMB Memorandum, *Updated Implementing Guidance for the American Recovery and Reinvestment Act of 2009*, April 3, 2009, pp. 54-55. In our view, the sole issue in this matter is whether or not this particular contract was suitable for award through the 8(a) BD program.

Following is the Agency's response to the IG's recommendation:

Recommendation – Take steps to ensure that no procurement action is taken prior to the approval of an acquisition plan by the AA for M & A.

We agree with this recommendation and will take the necessary steps to address the noted concern. Such steps will include a review and, as deemed appropriate, a revision of current Agency guidelines.

Thank you again for your review and providing for the opportunity for this response.