

EVALUATION OF SBA'S CONTRACT FOR DISASTER ASSISTANCE LOAN RECOMMENDATION SERVICES

REPORT NUMBER 22-10 | APRIL 14, 2022





EXECUTIVE SUMMARY

EVALUATION OF SBA'S DISASTER ASSISTANCE LOAN RECOMMENDATION SERVICES

Report No. 22-00

April 14, 2022

What OIG Reviewed

We evaluated the U.S. Small Business Administration's (SBA) procedures to award a contract for data analysis and loan recommendation services for Economic Injury Disaster Loan (EIDL) applications and Targeted EIDL Advance applications related to the Coronavirus Disease 2019 (COVID-19) pandemic.

To increase loan processing capabilities and quickly disburse loans during the pandemic, SBA used an existing contract awarded to RER Solutions and its subcontractor Rocket Loans set aside for small businesses.

SBA initially set a contract ceiling of \$100 million and then used emergency contracting authority to increase the contract ceiling to \$850 million. This increase was done in a noncompetitive process to quickly administer the COVID-19 EIDL program.

Our objectives were to determine whether SBA procured services for data analysis and loan recommendation services in accordance with Federal Acquisition Regulation (FAR) and SBA's acquisition standards and effectively monitored the contractor's compliance with small business set-aside subcontracting limitations.

We reviewed the FAR, Code of Federal Regulations, and SBA policies and procedures to award contracts. We evaluated the procurement practices and reviewed SBA contract actions from December 2018 to December 2020.

What OIG Found

SBA awarded the contract for data analysis and loan recommendation services without adequately ensuring the contract prices were fair and reasonable in accordance with Federal Acquisition Regulation and agency policy.

To quickly award loans during the COVID-19 economic crisis, SBA relied on the 2018 contract but did not follow the proper procedures to ensure that contract provided the best value to the government.

SBA's needs also changed significantly from the 2018 disaster loan contract to the requirements for processing COVID-19 EIDLs, and those changes

were not fully taken into consideration when awarding following contracts. As a result, there is no assurance that the rates SBA paid for services under the data analysis and loan recommendation contract were fair and reasonable.

SBA also did not ensure the contractor complied with established size standards to be eligible for a small business set-aside award. In addition, SBA did not ensure the contractor complied with subcontracting limitations, exceeding the limit by \$13 million.

These awards are intended to help small businesses compete and win government contracts. Instead, the COVID-19 contract was noncompetitively awarded and largely performed by an affiliate of one of the nation's largest mortgage lenders.

OIG Recommendation

We made six recommendations to strengthen SBA's procurement policies and enhance controls to ensure compliance with SBA's contracting program requirements.

Agency Response

SBA agreed or partially agreed with all six recommendations. Management's planned actions resolved two recommendations. Management took corrective actions to close two other recommendations. SBA plans to train acquisition staff on small business size challenges and price analysis techniques.

SBA established a template for contracting officers to document their price analysis results. SBA also established policy to require that contractors report annually on compliance with subcontracting limitations.


We did not reach resolution on recommendations 1 and 3. Although SBA partially agreed with these recommendations, the proposed actions did not fully address our recommendations. OIG will seek resolution of those recommendations in accordance with our audit resolution policies and procedures.



U.S. Small Business Administration Office of Inspector General

DATE: April 14, 2022

TO: Isabella Casillas Guzman
Administrator

FROM: Hannibal "Mike" Ware 
Inspector General

SUBJECT: Evaluation of SBA's Contract for Disaster Assistance Loan Recommendation Services (Report 22-10)

This report presents the results of our evaluation of *SBA's Contract for Disaster Assistance Loan Recommendation Services (Report 22-10)*. We considered management's comments on the draft of this report when preparing the final report. Management agreed or partially agreed with all six recommendations in the report. However, two recommendations are pending resolution.

We appreciate the courtesies and cooperation provided by your staff. If you have any questions, please contact me or Andrea Deadwyler, Assistant Inspector General for Audits, at (202) 205-6586.

cc: Antwaun Griffin, Chief of Staff
Arthur Plews, Deputy Chief of Staff
Therese Meers, Acting General Counsel
Katherine Aaby, Associate Administrator Office of Performance, Planning, and Chief Financial Officer
Francisco Sanchez Jr., Associate Administrator, Office of Disaster Assistance
Barbara Carson, Deputy Associate Administrator, Office of Disaster Assistance
Michael Simmons, Attorney Advisor, Office of General Counsel
Joshua Barnes, Acting Director, Office of Continuous Operations and Risk Management
Tonia Butler, Director, Office of Internal Controls

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Introduction

In the unprecedented demand for economic assistance in response to the COVID-19 pandemic, the U.S. Small Business Administration (SBA) increased the loan cap, expanded use, and extended the deferment period for the Economic Injury Disaster Loan (EIDL) and Targeted EIDL Advance programs.

As a result, the agency needed help processing the additional application volume. SBA also needed an automated system capable of interfacing with its existing information systems to track the increased number of applications while promptly assisting applicants.

Economic Injury Disaster Loan Program

The Small Business Act, as amended, authorizes SBA to make loans to eligible businesses, nonprofits, homeowners, and renters after a declared disaster.¹ The SBA Office of Disaster Assistance (ODA) plans, directs, and administers SBA's responsibilities under the Act, by providing businesses physical disaster loans, personal property loans, economic injury loans, and other disaster related assistance.

ODA's Economic Injury Disaster Loan (EIDL) program is designed to provide economic relief to small businesses, small agricultural cooperatives, and most private nonprofit organizations experiencing a temporary loss of revenue due to declared disasters. Small businesses can use EIDL funds to meet financial obligations and operating expenses that could have been met had the disaster not occurred. These loans provide vital economic support to small businesses to help overcome the temporary loss of revenue.

Pre-pandemic Contract Award

In early 2018, SBA solicited proposals for services to help ODA process loans promptly. The need for these services stemmed from processing delays because of increased disaster loan applications following hurricanes Harvey, Irma, and Maria coupled with technical difficulties related to SBA's internal disaster loan processing platform.

SBA's requirement included a system for receiving loan application information and gathering necessary data for decision recommendations based on SBA and industry standard practices. SBA also stated that it preferred a contractor with an existing technical capability to interface with the agency's platform and could provide recommendations within 10 minutes. SBA limited the competition to small businesses.

Out of 10 proposals received, SBA awarded an indefinite-delivery, indefinite-quantity contract to RER Solutions Inc. RER subcontracted with RockLoans Marketplace LLC, doing business as Rocket Loans. Rocket Loans is an affiliate of Rock Holdings and Quicken Loans, one of our nation's largest mortgage lenders. Indefinite-delivery, indefinite-quantity contracts are used to acquire services and supplies when it is not certain when and how much is needed.

These contracts have stated limits during a fixed period while the government determines the specific individual requirements, which is accomplished through issuing task order

¹ Small Business Act of 1953, Pub. L. No. 85-536, 72 Stat. 384 (codified as amended at 15 U.S.C. §§ 631-657).

contracts. This initial contract with RER had options to extend the services for up to 4 years with a price cap of \$100 million.

SBA required the contractor to generate final electronic loan documents, offer electronic signature capabilities, maintain loan documentation, and electronically transfer information to SBA for final loan approval or denial. The payment terms included fixed fees for each loan recommendation as part of a tiered structure that in some cases provided minimal or no volume discounts, in addition to multimillion dollar fixed monthly fees.²

The average estimated volume for this contract was 65,000 loans per year. SBA estimated catastrophic events could generate more than 300,000 applications.

Pandemic Onset and Post-award Contract Administration

On March 13, 2020, the President declared the COVID-19 pandemic a nationwide emergency pursuant to Section 501(b) of the Stafford Act. On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law, granting additional funds for aid relief. The CARES Act designated funds for COVID-19 EIDLs and emergency advance grants which allowed eligible businesses that applied for a COVID-19 EIDL to request an advance of up to \$10,000. This prompted an unprecedented surge in applications.

In a single day, on March 31, 2020, SBA reported receiving a record-breaking 680,000 COVID-19 EIDL applications. Over the next 10 days, SBA received more than 4.5 million loan applications. SBA also found that its Disaster Credit Management System and Disaster Loan Assistance Portal were not equipped to process the high volume of loan applications. SBA's system had technical difficulties that made it intermittently inoperable.

In response, exercising increased agency discretion authorized in connection with the President's emergency declaration under section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5207 (the "Stafford Act"), SBA awarded the RER-Rocket team a second task order contract to help meet needs during an economic crisis, but without using a competitive bidding process. SBA used emergency contracting procedures to increase the indefinite-delivery, indefinite-quantity contract ceiling amount.

Under the second task order contract, SBA relied on RER's second-tier subcontractor's system, the Rapid Finance Portal, to process COVID-19 EIDL applications. Rapid Financial Services (Rocket Loans' affiliate) began processing loan recommendations through a subcontracting agreement with Rocket in late March 2020. Processing COVID-19 EIDL applications required a change from processing primarily residential loan applications in response to a physical disaster, such as a hurricane, to economic injury business loan applications. SBA also added requirements for processing EIDL advance grant applications.

SBA increased the indefinite-delivery, indefinite-quantity contract ceiling from the initial \$100 million in 2018 to \$600 million in April 2020, to support the COVID-19 EIDL program. In August 2020, SBA used emergency contracting procedures again to increase the

² Contracts 73351019F0015, 73351020F0071, and 73351020F0126.

indefinite-delivery, indefinite-quantity contract ceiling amount to \$850 million and issued another task order for COVID-19 EIDL and targeted EIDL loan recommendation services.

Objectives

The objectives of our evaluation were to determine whether SBA (1) procured services for data analysis and loan recommendation services in accordance with Federal Acquisition Regulation (FAR) and SBA's acquisition standards, and (2) effectively monitored contractor compliance with small business set-aside subcontracting limitations.

Finding 1: SBA Did Not Ensure Fair and Reasonable Prices or Contractor Compliance with Size Standards for the 2018 Contract

SBA awarded the initial 2018 indefinite-delivery, indefinite-quantity contract for disaster data analysis and loan recommendation services without adequately ensuring the contract prices were fair and reasonable in accordance with FAR and agency policy. Program officials included an independent government estimate as part of the acquisition planning package sent to the contracting officers, as required.

However, the government estimate program officials used did not meet the acquisition standard requirements that were in effect at that time. For example, the government estimates did not identify significant labor categories required to perform the services. It also did not explain the basis for the estimated labor rates and hours, nor did it specify subcontract costs or other direct costs.

We were also unable to verify that the government estimates were prepared and approved prior to receiving contractor cost proposals because it was not dated or signed in the contract file. As a result, there is no assurance that the rates SBA paid for the services under the indefinite-delivery, indefinite-quantity contract were fair and reasonable.

SBA also did not ensure the contractor was eligible for a small business set-aside award. SBA's contracting officers can accept an offer's representation that it is small unless the contracting officer has a reason to question the representation. SBA's Market Research Report and discussions with contracting personnel indicated that the agency had an early awareness that participation of a larger firm would be required to satisfy the contract requirements.

For this award, the size standard was \$15 million dollars in annual revenue. For a business concern that has affiliates, revenue is calculated by adding the average annual receipts of the business with the average annual receipts of its affiliate.

However, SBA did not evaluate whether the business relationship between RER and its subcontractor, Rocket Loans, presented an affiliation concern, which would have prevented RER from being considered a small business for contract eligibility purposes. RER on its own may have been a small business, but RER relied on Rocket to perform vital contract requirements, which made them affiliates according to the ostensible subcontractor rule.

SBA should have combined their annual receipts when evaluating whether RER was eligible for the small business set-aside award. As a result, the \$850 million in government funds set aside for a small business was not used as intended.

Price Reasonableness Determination

Federal Acquisition Regulation requires contracting officials to establish price reasonableness before awarding contracts.³ In addition, SBA's acquisition standards for this award also required SBA officials to compare the contractor's proposed prices to an independent government cost estimate as part of its price reasonableness assessment.

³ FAR 15.402.

SBA's acquisition standards required program officials to document the methodologies used to derive costs in the independent government cost estimates.⁴ The acquisition standards also required that program officials include the government estimates, signed by the preparer, as part of the acquisition planning package sent to the contracting officers.

The acquisition standards stated that the contracting officers should consider the acquisition package as incomplete if the methodology is not documented in the government cost estimate or acquisition plan. However, neither the government cost estimate nor acquisition plan for the 2018 contract explained the methodology used to project loan decisioning rates.

The government estimates did not identify labor categories required to perform the services. It also did not explain the basis for the estimated labor rates and hours, nor did it specify subcontract costs or other direct costs. Further, we were unable to verify that the government estimates were prepared and approved prior to receiving the contractor cost proposals because the government estimates were not dated or signed in the contract file.

Program officials stated price reasonableness was achieved through adequate competition. Contract documents indicated the requirement for these services were competed using Acquisition of Commercial Items⁵ and Contracting by Negotiation⁶ procedures, with the expressed intent of providing competition that would result in fair and reasonable prices at the best value for the government. However, the competitive bids received were disparate and did not provide a basis to indicate that the quoted prices were reasonable.

SBA's acquisition standard explained that while some variation from the government estimates is expected in comparison to the proposals, significant variance may be an indication that the bidders did not understand the basis for the government's request. Significant variance may also indicate that "the Government did not understand the basis of how industry provides the goods and/or services."⁷

The standard defined variance greater than 30 percent as significant. The variation range in this case, from the lowest to highest bidders, spanned 163 percent. RER-Rocket's proposed prices were 55 percent more than the government's independent estimate (see Table 1).

SBA's acquisition standard further stated that while contracting officers have authority to make the final decision to accept or reject variations, when a variation is significant, contracting officers should consider reaching back out to the marketplace to determine the reason. The contracting officer did not analyze or address any of the significant variations.

⁴ SBA Standard Operating Procedure 20 21, Government Acquisition Program, January 13, 2017, p. 28.

⁵ FAR Part 12.

⁶ FAR Part 15.

⁷ SBA Standard Operating Procedure 20 21, Government Acquisition Program, January 13, 2017, p. 29.

Table 1: Evaluation of the Proposed Price Variances for the 10 offers received compared to the Independent Government Cost Estimate

Prospective Contractors	Difference from Government Cost Estimate (percent)
Proposal 1	75.7
Team RER-Rocket	55.7
Proposal 3	29.4
Proposal 4	12.0
Proposal 5	(50.8)
Proposal 6	(60.6)
Proposal 7	(72.1)
Proposal 8	(73.0)
Proposal 9	(81.0)
Proposal 10	(88.1)

Source: OIG generated based on the award decision memorandum and the 10 offers SBA received for the request for bids for the loan recommendation services requirement

Note: In financial notation, parentheses indicate negative numbers.

Another indication of a lack of understanding or clear communication of requirements was the Award Decision Memo, which stated that team RER-Rocket proposed a fixed price structure for 4 months rather than 6 months, as required in the solicitation, and noted that, “It is hard to tell what we are paying for or what the level of effort is for the first 6 months.”⁸

SBA noted team RER-Rocket’s proposed price and scope of work were double the amount of hours that the government estimated for the first 6 months, and the agency awarded the contract without determining if the additional hours were reasonable. Contract documents provided by the agency also did not indicate what value the prime contractor added to the partnership, or the continued need for RER’s services beyond the first 6 months of contract performance.

Small Business Size Determination

SBA’s Market Research Report and discussions with contracting personnel indicated that the agency had an early awareness that participation of a larger firm would be required to satisfy the contract requirements. The Market Research Report, which was prepared early in the planning phase in 2018, indicated that the small businesses who responded to the solicitation either did not have the data and processes already in place and would need to

⁸ SBA Award Decision Memo, Solicitation Number 73351018R0010, December 7, 2018, p. 27.

build a system or partner with a large firm. The report further noted that given the urgency of the need, the preference was for a small firm to subcontract with a large business.

Although it was clear to agency officials that a small business needed to subcontract with a large business, SBA's acquisition team did not assess whether the small business's reliance on the subcontractor to perform the service requirements presented an ostensible subcontractor affiliation. Affiliated firms that exceed the size standards for a set-aside contract would have been ineligible for the award.

The Ostensible Subcontractor Doctrine holds that SBA may determine a prime contractor and its reported subcontractor are affiliated with one another for size purposes when the subcontractor will be performing "primary and vital" contract requirements or if the prime contractor is otherwise unusually reliant on the subcontractor for performance.⁹ For this award, SBA did not evaluate whether the prime contractor, RER, was unusually reliant on its subcontractor, Rocket, to perform primary and vital contract requirements.

We found that the proposal, teaming agreement, and Award Decision Memorandum indicated a prime-subcontractor teaming relationship that suggested unusual reliance on the subcontractor for performance.

If the small business is found to violate the rule, the size of the small prime contractor and the large subcontractor are grouped for size purposes, which can make the small prime contractor ineligible for a small business set-aside award and result in penalties prescribed in 15 U.S.C. 645(d).¹⁰

Federal regulations consider a contractor's failure to comply with the spirit and intent of a subcontract limitation a violation of the terms of a government contract and could be used to exclude a contractor from future federal contracts.¹¹

One indication that the subcontractor Rocket Loans' performance was primary and vital was the joint proposal, which consistently referred to prime small business contractor RER Solutions Inc. and Rocket Loans collectively throughout as the RER-Rocket team. It referenced use of the RER-Rocket platform that would be used to process loans.

We noted that the RER-Rocket teaming agreement asserted that the prime contractor would perform the primary and vital requirements of the prime contract and would always control the prime contract. However, the agreement also specified the use of the subcontractor's commercial computer software, called the Disaster Assistance Loan Recommendation System, application programming interface endpoint, and associated dashboard, which were significant for performing the contracted services.¹²

Another indication that the subcontractor's performance was primary and vital was SBA's Award Decision Memo, which stated that RER's superior technical evaluation was based on the subcontractor's business systems and past performance. We found Rocket Loans' business systems, capabilities, and experience were primary elements required to execute

⁹ 13 C.F.R. § 121.103(h)(4).

¹⁰ 13 C.F.R. § 125.6(g).

¹¹ FAR 6.302-2(d).

¹² RER Solutions Inc. and RockLoans Marketplace LLC Teaming Agreement, September 7, 2018, p. 3.

the Statement of Work and vital to the contract performance, which violates the contract requirements. Rocket and Rapid are affiliates of Quicken Loans, one of the nation's largest mortgage lenders. Quicken Loans significantly exceeds the size thresholds for set-aside contracts intended to benefit small and disadvantaged businesses.

Agency officials noted that it was clear to them that the small business would perform most of the work because the cost proposal had shown that RER would perform 65 percent and Rapid 35 percent of the work. However, we found that this cost breakout only showed how the RER-Rapid team would perform on the first \$6.8 million of the contract.

Most of this effort was for the first 6 months to integrate the Rapid system with the Office of Disaster Assistance's Disaster Credit Management System. For the remaining contracted services, which at that time had a ceiling of \$100 million, the RER-Rapid cost proposal showed a fixed rate per loan recommendation that did not differentiate between RER and Rapid's cost. SBA had no visibility, from a cost perspective, of how RER would perform the majority of the contracted services.

When awarding the small business set-aside contract to team RER-Rocket, SBA did not carefully consider the relationship between Rocket Loans and its affiliate Rapid Financial Services (which were not small businesses) as required by federal regulations.¹³ As a result, RER and Rocket Loans circumvented the subcontracting rule which was established to prevent a larger business from using a small business as a pass-through to profit from set-aside contracts meant to support diverse, small business enterprise.

Recommendations

We recommend the Administrator require the Associate Administrator for the Office of Performance, Planning, and the Chief Financial Officer to

1. Implement procedures to ensure contracting officers use effective proposal analysis techniques to determine prices are fair and reasonable in accordance with FAR 15.404.
2. Implement procedures to require contracting officers to assess compliance with size requirements when small businesses propose using subcontractors to perform significant work requirements.
3. Request a formal size determination in accordance with FAR 19.302 to evaluate whether the loan processing contractor exceeded the size standard and remedy any violation in accordance with 15 U.S.C. 645(d).

¹³ 13 C.F.R. § 121.103(h)(2).

Finding 2: SBA's Application of Emergency Contracting Procedures Did Not Ensure Fair and Reasonable Prices or Contractor Compliance with Subcontracting Limitations

To expedite the massive undertaking of administering the COVID-19 EIDL program in March 2020, SBA used emergency contracting authority to increase the existing small business set-aside contract awarded in 2018 to process disaster loans. SBA officials concluded that was the best way to contract for these services and execute the COVID-19 EIDL program quickly. However, the services SBA needed changed substantially when it began processing COVID-19 EIDL applications.

Notably, SBA changed the system it used to process the loans, and instead of processing primarily home loans like in past disasters, COVID-19 EIDLs and advances primarily involved business loans. When SBA leveraged the existing contract to meet the needs of the COVID-19 programs, it did not fully consider how its needs differed from the 2018 contract or the effect that significant contract requirement changes would have on the price of services provided. SBA increased the small business set-aside contract to \$850 million without considering potential cost saving alternatives available under emergency contracting authority.

For example, program officials did not consider selecting a prime contractor that had the technical expertise and capability to fulfill requirements specific to the complexities of an economic injury disaster loan program. Because SBA did not consider using alternative contracting options available during the emergency, SBA likely overpaid to obtain these services.

Though the agency worked to quickly provide financial aid to America's small businesses, they also carried forward the contracting flaws from the 2018 award. Contracting officials for the original award did not follow the proper process to ensure the contract costs were the best value for the government. SBA also did not ensure the contractor provided adequate oversight of the subcontracting limitation, which exceeded the 50 percent ceiling by \$13 million.

Price Reasonableness Determination Methodology Affected Options Exercised During Pandemic

As previously noted, contracting officials used inadequate government estimates to evaluate the price reasonableness of prospective contractor proposals in 2018. SBA relied on the 2018 contract prices and the government estimates for determining the sole-source contract ceiling increases, and for determining that prices for subsequent task order awards were fair and reasonable despite significant differences in scope of work from the original 2018 contract.

The original contract requirement assumed that the agency's internal information systems would interface with the subcontractor's systems. However, the agency's needs changed when SBA became aware that its systems did not have the capacity to process COVID-19 EIDL loans. Interviews with contractor representatives indicated Rapid Financial Services was asked and agreed to provide business loan recommendation services as a second-tier subcontractor using their business systems.

SBA’s decision to non-competitively increase the ceiling of the existing contract also did not reflect the significant shift in application volume from residential to business loans, new processes, and documentation storage requirements. Federal Acquisition Regulation states task or delivery order contracts estimated to exceed \$100 million (including all options) may only be awarded to a single source when unit prices are established for products in the contract, or prices for services are established in the contract for the specific tasks to be performed.¹⁴

Business loans were negotiated on a per-loan basis and the pricing used did not indicate all price points. For example, no pricing was established for Uniform Commercial Code (UCC) filing fees for Task Orders 1 or 3; and no pricing was established for business loans in Task Order 2 (see Table 2).

Table 2: Residential and Business Loan Recommendation Rates

Residential Loan Rates Per Recommendation (dollars)				Business Loan Recommendations (dollars)		
Task Order	Home Loan Tier 1 Rates (0-66,000)	Home Loan Tier 2 Rates (66,001-150,000)	Home Loan Tier 3 Rates (150,001+)	Business Loan Rate	Dun and Bradstreet Report	UCC Code Filing Fee
Task Order 1 Hurricanes Harvey, Irma & Maria	175	170	165	425 each	125 each	Price Not Indicated
Task Order 2 COVID-19 EIDLs & Targeted EIDLs	169.95	169.95	169.95	0 each	125 each	100 each
Task Order 3 Non-COVID-19 EIDLs	180.25	175.10	169.95	437.75 each	128.75 each	Price Not Indicated

Source: OIG generated analysis based on SBA’s contract awards

We also found that program officials did not consider alternate sources or further use of emergency contracting provisions for the award, which was set up to perform through March 2024. Typically, the period of performance of a contract awarded or modified using this emergency contracting authority may not exceed 1 year unless the head of the agency determines that exceptional circumstances apply.¹⁵ The regulation is intended for agencies to award another contract for the required goods and services using competitive procedures by the time the 1-year period of performance ends. SBA's sole-source

¹⁴ FAR 16.504(c)(1)(ii)(D)(1)(ii)(A).

¹⁵ FAR 6.302-2(d)(1)(ii).

justification, which was based on unusual and compelling urgency, indicated the agency “anticipates obtaining competition at the conclusion of this contract.”

In April 2020, the Administrator at that time approved the use of noncompetitive award procedures for the unusual and compelling urgency. However, in this case, SBA had set aside the contract for a small business which had to subcontract with a large business to perform the vital work that yielded higher prices for up to 5 years before it would obtain competition for future services.

SBA could have used the emergency contracting provisions that were available and awarded the contract directly to a contractor that had the ability to fulfill the new requirements of the EIDL program. SBA also could have pursued competitive contracting procedures seeking a better value for the government after the first year of operating under the emergency authority.

Subcontracting Limitations Not Effectively Monitored

SBA did not ensure the contractor provided adequate oversight of the subcontracting limitation, which exceeded the 50 percent ceiling by \$13 million (see Appendix II for a schedule of questioned costs). Under federal set-aside contracting terms, small businesses are prohibited from subcontracting a majority of work to larger businesses.¹⁶

These subcontracting limitations apply to contracts set aside for small businesses when the contract amount exceeds \$250,000, or \$800,000 if the head of the agency determines that services are to be used to support response to an emergency or a major disaster under 42 U.S.C. 5122 (Stafford Act), 41 U.S.C. 1903.¹⁷

As noted in Finding 1, SBA’s Market Research Report and interviews with contracting personnel indicated that the agency had an early awareness that participation of a larger firm would be required to satisfy the contract requirements. However, agency officials set aside the requirement solely for small business without a documented plan for monitoring compliance with subcontracting limitations.

As a result, SBA’s process for monitoring the prime contractor’s compliance relied on contractor invoices that lacked sufficient detail to determine the division of labor and the percentage of subcontracted work. We identified more than \$13 million dollars paid to the subcontractor in excess of the limitations on subcontracting (see Table 4).¹⁸

¹⁶ 13 C.F.R. § 125.6.

¹⁷ RER Solutions Inc. and RockLoans Marketplace LLC Teaming Agreement, September 7, 2018, p. 3.

¹⁸ 13 C.F.R. § 125.6(a)(1).

Table 3. Subcontract Costs by Task Order

Task Order	Total Contract Payments (dollars)	Payments Received by Prime (dollars)	Payments Received by Sub (dollars)	Excess of 50 Percent Threshold (dollars)
Task Order 1 Hurricanes Harvey, Irma, and Maria	\$6,597,210.60	\$3,345,530.23	\$3,251,680.37	--
Task Order 2 COVID-19 EIDLs & Targeted EIDLs	740,506,022.40	357,338,310.65	383,167,711.75	12,914,700.55
Task Order 3Non-COVID-19 EIDLs	9,126,074.76	4,431,613.43	4,694,461.33	131,423.95
Total	\$756,229,307.76	\$365,115,454.31	\$391,113,853.45	\$13,046,124.50

Source: OIG generated analysis based on invoices retrieved from SBA’s Joint Administrative Accounting Management System (JAAMS) and subcontractor invoices obtained from RER Solutions Inc.

Acquisition officials stated they ensured prime contractor compliance with subcontracting limitations by monitoring invoices. However, the prime contractors’ invoices submitted to SBA did not have sufficient detail to distinguish support provided by each entity to facilitate effective monitoring. SBA requested the prime contractor confirm that they were following subcontracting limitations in December 2020. The prime contractor asserted it complied and SBA accepted the response without any supporting analysis or evidence.

As it relates to post-award oversight responsibilities, neither the Federal Acquisition Regulation nor SBA policies specified how contracting officers were to ensure compliance and there’s no documentation to support the contractor’s compliance. As a result, there is an increased risk that ineligible businesses could receive the benefit of awards intended for developing small businesses owned by socially and economically disadvantaged entrepreneurs.

Recommendations

We recommend the Administrator require the Associate Administrator for the Office of Performance, Planning, and the Chief Financial Officer to

4. Implement procedures to assess prospective firms’ ability to comply with subcontracting limitations prior to contract award.
5. Implement procedures to monitor post-award compliance with subcontracting limitations.
6. Before exercising options or awarding additional task orders against the contract, assess alternative contracting actions, such as pursuing another contract using competitive procedures to ensure fair and reasonable prices. SBA should then document the determination in the award file.

Analysis of Agency Response

SBA management provided formal comments, included in Appendix III. Management agreed or partially agreed with all six recommendations and implemented corrective actions to close two recommendations.

Management's planned actions resolved two recommendations, and comments included general timelines for implementing the corrective actions. Program officials provided specific target dates to implement corrective actions in internal communications.

Management's proposed corrective actions did not fully address the remaining two recommendations. In accordance with our audit follow-up policy, we will attempt to reach agreement with SBA management on the unresolved recommendations within 60 days of the date of this report. If we do not reach agreement, OIG will notify the audit follow-up official of the disputed issues.

Summary of Actions Necessary to Close the Report

The following sections detail the status of the recommendation and actions necessary to close them:

Recommendation 1

Implement procedures to ensure contracting officers use effective proposal analysis techniques to determine prices are fair and reasonable in accordance with FAR 15.404.

Status: Unresolved

Management partially agreed with this recommendation. Management stated that FAR 15.404 prescribes price analysis techniques for actions that are procured under FAR part 15 procedures that govern competitive and noncompetitive negotiated acquisitions.

Management stated that further implementation of the techniques is not necessary because they are already implemented in the FAR and SBA does not have an agency level acquisition supplement. They plan to conduct training for acquisition staff on FAR part 15 price analysis techniques within the next 6 months, targeting September 30, 2022, for final action.

Although the FAR outlines contracting officers' responsibilities to ensure that the final agreed-to contract price is fair and reasonable, it does not provide specific procedures on how to successfully perform these techniques. OIG agrees that training is useful.

However, management did not specify that the training will include or be supplemented with documented procedures for contracting officers to follow in performing proposal analysis techniques, which is critical to ensuring fair and reasonable prices for the government. Documented procedures would provide consistency in the application of the FAR and clear guidance for new contracting officers.

This recommendation can be closed when management provides evidence that they trained contracting officers and implemented procedures to ensure contracting officers effectively applied the proposal analysis techniques.

Recommendation 2

Implement procedures to require contracting officers to assess compliance with size requirements when small businesses propose using subcontractors to perform significant work requirements.

Status: Resolved

Management partially agreed with this recommendation, stating that this requirement is only applicable when FAR part 19 set-asides are used and may not apply at the order level for certain contracts. Management stated that for the small business set-aside contract reviewed, the regulation allowed for the contracting officer to accept the self-certification. Management referred to FAR 19.301(f), which states that the contracting officer shall accept an offeror's representation unless the contracting officer has reason to question the representation.

Management also stated that in this instance, the contracting officer raised concerns directly with the small business prime contractor who reassured their ability to meet subcontracting limitations. Management stated program officials will coordinate to conduct training for acquisition staff on size challenges in accordance with FAR Part 19 within the next 6 month, targeting September 30, 2022, for final action.

In this case, training contracting officers on size challenge procedures should improve their ability to detect indicators that warrant concern that a firm self-certifying as a small business may not be eligible for the award. Management asserted that the contracting officer raised concerns directly with the small business prime contractor, but that was several months after awarding the contract. As management stated, the contracting officer must have determined that the firm was an eligible small business before making the award.

We maintain our position that SBA did not carefully consider the relationship between Rocket Loans and its affiliate Rapid Financial Services (which were not small businesses) before awarding the contract. FAR part 19.301-1(f) provides for contracting officers to accept the offeror's representation that it meets the size standard unless the contracting officer has a reason to question the representation. However, the proposal, teaming agreement, and Award Decision Memorandum indicated a prime-subcontractor teaming relationship that suggested unusual reliance on the subcontractor for performance.

SBA's size regulations 13 C.F.R. § 121.103(h)(2) establish that a prime contractor with an unusual reliance on a subcontractor to perform primary and vital requirements of a contract should be treated as joint venturers for size determination purposes. In this instance, SBA's contracting officer should have questioned the representation as prescribed by FAR part 19.301-1(f). This recommendation can be closed when management provides evidence that they trained contracting officers on size challenge procedures.

Recommendation 3

Request a formal size determination in accordance with FAR 19.302 to evaluate whether the loan processing contractor exceeded the size standard and remedy any violation in accordance with 15 U.S.C. 645(d).

Status: Unresolved

Management partially agreed with this recommendation and noted that the procedures OIG cited in the draft report (FAR 19.8) were not applicable to the contract and task orders we reviewed. Upon further review, we revised the recommendation to appropriately reference FAR 19.302 as the procedures for SBA to follow.

Management stated that at the time of award, RER self-certified as a small business concern in accordance with the FAR, and that requesting a formal size determination of RER is not appropriate at this point. Adding that FAR 19.301-2 requires size recertification in case of novation, merger, or for contracts that exceed 5 years period of performance, which are not applicable to this contract action. Management proposed requesting a formal size representation from RER prior to issuing any new task orders or exercising available option periods and updating its status should RER report that it no longer qualifies as a small business concern.

Management stated that within the next 6 months, they plan to train Acquisition Operations to adhere to FAR 19.3 and 19.505 when conducting small business set-aside procurements. Management further stated that within the next 6 months they would provide training to Acquisition Operations on their FAR authority for filing contracting officer-initiated size protests and requesting formal size determinations from SBA.

We maintain our position that SBA should formally evaluate the contractor's size to ensure any further work is performed by an eligible small business. FAR part 19.302 (d)(2) allows for contracting officers to file a small business representation protest before or after award. SBA's contracting officer should take prompt action to evaluate whether the loan processing contractor exceeded the size standard and remedy any violation in accordance with 15 U.S.C. 645(d).

This recommendation can be closed when management provides evidence that the specified training was provided to Acquisition Operations and that SBA evaluated the loan processing contractor's size and any violations have been remedied.

Recommendation 4

Implement procedures to assess prospective firms' ability to comply with subcontracting limitations prior to contract award.

Status: Resolved

Management partially agreed with this recommendation, stating that FAR 19.5 provides contracting officer with two compliance period options for measuring limitations on subcontracts. Management stated SBA plans to increase post award compliance reviews based on recommendation number 5.

Management further indicated that the contracting officer raised concerns that were addressed by the prime contractor through written assurance that it could meet the subcontracting limitation for the first two task orders. Management explained that these measures document SBA's actions for assessing a prospective firms' ability to comply with subcontracting limitations prior to award of task orders one and two. However, we found that the contracting officer didn't raise these concerns until December 2020, which was several months after SBA issued the first two task orders.

Management further explained that they did not need to implement agency level policy because FAR 19.3 outlines the process for size status and protesting status. It is our position that although the FAR established the procedures, the agency is required to implement those procedures.

Management stated program officials will coordinate and conduct size protest training for contracting officers within 6 months, targeting September 30, 2022, for final action. Training contracting officers on the procedures outlined in FAR part 19.3 and FAR part 19.5 would ensure staff are informed of their responsibilities for challenging an offeror's size status.

This recommendation can be closed when management provides evidence that they trained staff on the procedures outlined in FAR part 19.3 and FAR part 19.5 to ensure contracting officers are aware of their responsibilities to implement these procedures.

Recommendation 5

Implement procedures to monitor post-award compliance with subcontracting limitations.

Status: Closed

Management agreed with the recommendation and the questioned costs included in the report. Management provided evidence that they established procedures for assessing and documenting compliance with limitations on subcontracting requirements.

Management also established requirements for contractors to report annually on their compliance with the subcontracting limitations. We consider this recommendation closed.

Recommendation 6

Before exercising options or awarding additional task orders against the contract, assess alternative contracting actions, such as pursuing another contract using competitive procedures to ensure fair and reasonable prices. SBA should then document the determination in the award file.

Status: Closed

Management agreed with the recommendation and provided evidence that they added a determination-and-findings template to PRISM, SBA's contract writing system, to document price analysis before exercising options. We consider this recommendation closed.

Appendix I: Objectives, Scope, and Methodology

Objectives

The objectives of our evaluation were to determine whether SBA procured services for data analysis and loan recommendation services in accordance with Federal Acquisition Regulation and SBA's acquisition standards and effectively monitored the contractor's compliance with small business set-aside subcontracting limitations.

Scope and Methodology

Our scope covered contracts 73351019F0015, 73351020F0071, and 73351020F0126 and related procurement actions awarded by SBA for data analysis and loan recommendation services to support the Office of Disaster Assistance from December 2018 to December 2020, with an obligated total amount of \$773.8 million. This amount represents over 90 percent of the maximum amount available under the indefinite-delivery, indefinite-quantity contract that had a ceiling of \$850 million.

To determine whether SBA complied with the FAR and SBA's acquisition standards, we reviewed the indefinite-delivery, indefinite-quantity contract and related task orders and award modifications.

To determine whether SBA effectively monitored the contractor's compliance with small business set-aside subcontracting limitations, we inspected invoices and interviewed contracting personnel to gain an understanding of the monitoring process. To achieve our objectives, we reviewed the requirements in the FAR, Code of Federal Regulations, applicable SBA standard operating procedures and policy guidance.

We reviewed award documentation to determine whether SBA met the requirements of federal regulations and other guidance. In addition, we interviewed SBA personnel from the Office of Performance, Planning, and the Chief Financial Officer and the Office of Disaster Assistance.

We conducted this evaluation in accordance with the Council of the Inspectors General on Integrity and Efficiency *Quality Standards for Inspection and Evaluation*. These standards require that we adequately plan and perform the evaluation to obtain sufficient and appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objective. We believe that the evidence we obtained provides a reasonable basis for our findings and conclusions based on our evaluation objective.

Use of Computer-Processed Data

We relied on computer-processed data in the program office files as well as contract award data from the government's procurement database, Federal Procurement Data System-Next Generation (FPDS-NG). FPDS-NG was used to verify completeness of the record of contract actions applicable for this award.

We also retrieved contractor invoices from SBA's Oracle Administrative Accounting System-Joint Administrative Accounting Management System. We tested the reliability of the data by comparing invoices obtained from the prime contractor as well as the 2020 subcontractor revenue reported by Rocket Loans to the SEC on Form 10-K. We believe the computer-processed information is reliable for the purposes of this evaluation.

Prior Audit Coverage

Report Title	Objective	Report Number	Final Report Date
<i>Inspection of Small Business Administration's Initial Disaster Assistance Response to the Coronavirus Pandemic</i>	Assess SBA's initial disaster assistance response to the COVID-19 pandemic, including staffing adequacy, loan application volume, timeliness of disaster loan approval, and customer service	SBA OIG 21-02	October 28, 2020
<i>Serious Concerns of Potential Fraud in Economic Injury Disaster Loan Program Pertaining to the Response to COVID-19</i>	Inform the agency of strong indicators of widespread potential fraud in the Economic Injury Disaster Loan and Advance grant programs that require immediate attention and action	SBA OIG 20-16	July 28, 2020
<i>White Paper: Risk Awareness and Lessons Learned from Audits and Inspections of Economic Injury Disaster Loans and Other Disaster Lending</i>	Provide SBA information regarding lessons learned and identified risks from prior audits and inspections that it should consider in managing and mitigating the risk of loss for COVID-19 related loans	SBA OIG 20-12	April 3, 2020

Appendix II: Questioned Costs

Questioned costs are expenses not supported by adequate documentation at the time of the audit, or which otherwise do not comply with legal, regulatory, or contractual requirements.

Table 4. OIG Schedule of Questioned Costs for the Task Orders under contract 73351019D0001

Description	Amount (dollars)	Explanation
Unallowable Expense	\$13,046,125	Amount of costs paid in excess of subcontracting limitations provided, according to 13 CFR § 125.6(g)

Source: OIG generated analysis based on invoices retrieved from SBA's Joint Administrative Accounting Management

Appendix III: Management Comments

SBA Response to Evaluation Report