

**SBA'S PLANNING AND AWARD OF THE
CUSTOMER RELATIONSHIP MANAGEMENT
CONTRACTS**

Report Number: ROM 10-16

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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

Date: June 29, 2010

From: Debra S. Ritt
Assistant Inspector General for Auditing

Subject: Audit of Small Business Administration's (SBA) Planning and Award of the
Customer Relationship Management Contracts, ROM 10-16

This report presents the results of our audit of SBA's planning and award of the Customer Relationship Management (CRM) contracts funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act). The purpose of the audit was to determine whether, in making the contract awards, SBA: (1) adopted an acquisition plan for the procurements 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 awards 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 Code of Federal Regulations (CFR), Federal Acquisition Regulations (FAR), SBA's Standard Operating Procedure (SOP) 00 11 1H, *Annual Acquisition Strategy and Procurement Planning*, and the CRM contract files. 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 CRM contract files to determine whether contracting personnel determined the contractors were qualified. We also reviewed the contracts to determine whether all contract-related Recovery Act requirements were included. To address the third objective, we reviewed the contract files and information from the Federal Business Opportunities (FedBizOpps) website - the Federal website for contract solicitation and award postings - to determine whether the awards were properly publicized. We conducted our audit between June 2009 and March 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 oversight. SBA used \$4.3 million of the \$20 million to fund the CRM initiative to create a centralized system for customer contact data. This system is designed to improve the interaction between SBA's employees and its customers. SBA's OCIO, which is the sponsoring program office, planned to implement the CRM initiative in three phases: (1) software licenses and maintenance; (2) integration support; and (3) hardware. SBA also planned to award separate contracts for each phase, two of which have been awarded. On June 16, 2009, SBA awarded a firm-fixed-price contract to Copper River Information Technology, LLC (Copper River) for \$1.8 million to procure Microsoft Dynamics software licenses.¹ The second contract was awarded to DRT Strategies, Inc. (DRT) on August 6, 2009, as an Indefinite-Delivery/Indefinite-Quantity contract for \$3.5 million² for integration support. Both contracts were awarded on a sole-source basis under the 8(a) Business Development Program.³

In February and April 2009, the Office of Management and Budget (OMB) issued guidance⁴ for carrying out activities funded by the Recovery Act. The guidance emphasized 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 CRM contracts were awarded without an approved acquisition plan. In our opinion, the contract awards appeared to be pushed through the Agency, without obtaining the proper signatures and clearance for the acquisition plan. SBA's acquisition strategy for the procurement also did not promote competition because SBA chose to issue the contracts on a sole-source basis under the 8(a) program. While the 8(a) business development program is authorized by law to use sole-source contracting under certain circumstances, the Copper River contract did not appear to qualify for a small business set aside contract or an 8(a) award because it was basically a "pass through" contract to purchase Microsoft software and licenses. The former contracting officer advised that he sent the CRM license

¹ The contract also provided for software assurance.

² The DRT contract consists of \$2.5 million in Recovery Act funds and \$1 million in Agency mission funds.

³ The SBA 8(a) Business Development Program was created to assist eligible small disadvantaged business concerns compete in the American economy through business development.

⁴ 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.

contract to SBA's Office of General Counsel (OGC) for legal review prior to award. However, the contract was awarded without legal clearance. Had the Agency waited for legal clearance, OGC may have determined that the contract was not suitable for 8(a) procurement because it did not meet small business rules. By awarding the non-competitive Copper River contract, SBA did not comport with OMB's guidance that contract awards be competed to the maximum extent possible.

Further, SBA incorporated the required Recovery Act clauses in both contracts and ensured the contractors were not on the excluded party list. However, SBA did not establish measurable outcomes for the project. Lastly, because the procurement for CRM licenses was awarded non-competitively, the contracting officer did not publicize the procurement.

The CRM Contracts Were Awarded Prior to the Approval of an Acquisition Plan

We determined that the contracting officer inappropriately awarded the contract for the purchase of CRM licenses to Copper River on June 16, 2009, and for integration support to DRT on August 6, 2009, prior to obtaining an approved acquisition plan for the CRM initiative. 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, *Annual Acquisition and Procurement Planning*, no procurement action shall be taken prior to the approval of the planned acquisition by the Associate Deputy Administrator (ADA) for Management and Administration (M&A). The title of this position was subsequently changed to the Associate Administrator (AA) for M&A.

Although SBA developed an acquisition plan for the CRM initiative, it was not approved by all of the required parties. Acquisitions exceeding \$500,000 must be approved by the AA for M&A and nine additional key SBA officials identified in SOP 00 11 1H.⁵ However, in planning for the CRM initiative, only 4 of the required 10 officials approved the acquisition plan. The contract file contained no evidence that the remaining six SBA officials—namely, the AA for M&A, Senior Procurement Executive, Chief Information Officer, Head of Contracting Office, Contract Specialist, and Acquisition Planner (OCIO)—approved the acquisition plan. The acquisition plan also did not receive concurrence from the Competition Advocate or OGC, as prescribed by the SOP. Because the CRM acquisition plan

⁵ Acquisitions of \$500,000 and above require comprehensive acquisition plan approval by the: 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.

was not approved by the appropriate personnel, the contracting officer should not have awarded the contracts to Copper River and DRT.

It appeared that the contract awards were made without an approved acquisition plan because they were processed in an expedited manner that did not include all required reviews. This is evidenced by the Agency not following normal clearance procedures, including obtaining a legal review by OGC. The former contracting officer who awarded the contracts also told us that he was under extreme pressure from senior SBA officials to quickly make the awards to Copper River and DRT.

SBA's Acquisition Approach Did Not Promote Competition

OMB guidance for carrying out activities funded by the Recovery Act emphasizes that agencies should use competitive procedures to the maximum extent possible for acquisitions made with Recovery Act funds. However, instead of competing the awards for the purchase of CRM licenses and integration support, SBA non-competitively awarded the contracts to Copper River and DRT—both 8(a) firms. Under the rules of the 8(a) program, the FAR allows procurements under \$3.5 million to be non-competitively awarded without soliciting a request for proposal on FedBizOpps, which significantly decreases procurement time. While this approach helped the Agency to expedite the contract awards, the Copper River award did not qualify for a sole-source award, as discussed below. As a result, this contract neither comported with OMB guidance for competitive awards, nor as an award to a small business. Additionally, as reported in April 2010, SBA did not report the DRT contract to Recovery.Gov, as required by the Office of Management and Budget.⁶

The Requirement Did Not Qualify for a Small Business or 8(a) Contract

OMB guidance promotes the use of small businesses for procurements made with Recovery Act funds. While SBA pursued small businesses for the CRM initiative by selecting 8(a) firms, the contract award to Copper River did not comply with small business rules under the CFR. Under 13 CFR, the CRM acquisition was subject to two possible scenarios: ostensible subcontracting and the non-manufacturer rule.⁷ Each scenario disqualified the acquisition of CRM licenses for 8(a) procurement.

⁶ OIG Report ROM 10-14, *Memorandum on the Accuracy of Recovery Act Contract Obligations Reported to the Federal Procurement Database System-Next Generation and Recovery.gov*.

⁷ According to FAR 19.001, "Non-manufacturer rule" means that a contractor under a small business set-aside or 8(a) contract shall be a small business under the applicable size standard and shall provide either its own product or that of another domestic small business manufacturing or processing concern (see 13 CFR 121.406).

Ostensible Subcontracting

An ostensible subcontractor is a subcontractor that performs primary and vital requirements of a contract upon which the prime contractor is unusually reliant. Copper River subcontracted with Dell and Microsoft when obtaining the CRM licenses. According to the AA for M&A, because Copper River did not have the necessary business relationship with Microsoft to purchase the CRM licenses, it used its relationship with Dell to obtain the CRM licenses for the contract at issue. Likewise, SBA executed key documents directly with Microsoft, without Copper River's involvement, in order to acquire the CRM licenses. Copper River was, therefore, unusually reliant upon both Dell and Microsoft in order to obtain the CRM licenses. Ultimately, Copper River did little, if any, discernable value-added work for this procurement. Both Dell and Microsoft are large businesses, which increased the size of Copper River through an implied joint venture.⁸ SBA regulations treat a contractor and its ostensible subcontractor as a joint venture for size determination purposes. The acquisition team should have recognized that the implied joint venture exceeded the size standard for an 8(a) acquisition, and should have disqualified the acquisition from consideration as an eligible 8(a) procurement of CRM licenses.

Non-Manufacturer Rule

The contracting officer assigned NAICS code 423430, *Computer and Computer Peripheral Equipment and Software Merchant Wholesalers*, to the procurement, which classified the contract as a product procurement. Therefore, the procurement was subject to the non-manufacturer rule. According to CFR, Title 13, Part 121, Subsection 406, *Size Eligibility Requirements for Government Procurement* [13 CFR121.406], to qualify as a small business concern for an 8(a) contract, a small business must either be: (1) the manufacturer of the item being purchased, to include modification of an item which the small business increased the value of the end item by 50 percent or more; or (2) a non-manufacturer, which normally sells the type of item being supplied, and the end item must be the product of a small business, or the contracting officer must obtain a waiver from the SBA Administrator. Insofar as Copper River was not the manufacturer and did not significantly modify the CRM software, it was not considered to be the manufacturer. Further, because Copper River did not regularly sell Microsoft CRM software and the end item was the product of a large business, Copper River

⁸According to FAR 19.101(7)(ii), a joint venture involves acquisition and property sale assistance. Concerns bidding on a particular acquisition or property sale as joint ventures are considered as affiliated and controlling or having the power to control each other with regard to performance of the contract. Moreover, an ostensible subcontractor, which is to perform primary or vital requirements of a contract, may have a controlling role such to be considered a joint venture affiliated on the contract with the prime contractor. A joint venture affiliate finding is limited to particular contracts, unless the SBA size determination finds general affiliation between the parties. The rules governing 8(a) Program joint ventures are described in 13 CFR 124.513.

also did not qualify as a non-manufacturer. Finally, the contracting officer did not obtain a waiver of the non-manufacture rule from the Administrator in order for Copper River to obtain Microsoft CRM licenses as required by 13 CFR121.406.

In addition, the acquisition team should have recognized that neither a small businesses nor an 8(a) set aside contract should be used as a “pass through” contract to procure products from a large business. However, a small business or an 8(a) contractor may be used when it makes meaningful changes or revisions to the product of a large business, which adds demonstrable value to the end product. SBA’s SOP regarding procurements is out of date⁹ and does not provide guidance on the proper and improper uses of small business set asides and sole-source 8(a) awards. Therefore, SBA should update the SOP to clarify the proper use of small business and set aside contracts.

According to FAR 1.602-1(b), no contract may be entered into unless the contracting officer ensures that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, are met. Further, SOP 00 11 1H states that before award, proposed contracts shall be forwarded to OGC for legal review. However, the Agency awarded the CRM license contract without the proper legal review. Although the contracting officer told us he submitted the contract to OGC for review before the award was made, the contract file does not indicate that OGC reviewed or approved this procurement. Had the CRM license contract been reviewed by SBA’s OGC, the Agency may have determined that the contract was not suitable for 8(a) procurement. Furthermore, the AA for M&A stated that the contract was clearly ineligible for a small business procurement; and had it been brought to his attention, he would not have approved the contract award.

Finally, although the procurement did not qualify for an 8(a) award, SBA reported it as an award to a small business in order to reach or exceed its annual small business procurement goals. We believe that such actions damage the integrity of SBA and its programs. As the Federal government’s small business advocate, SBA should discourage misuse of the 8(a) program and promote its integrity. However, by not following the program requirements, it sends the opposite message.

SBA Met Other Recovery Act Requirements, But Did Not Establish Measurable Outcomes to Ensure CRM Objectives Were Met

OMB’s April 2009 guidance requires that agencies include special terms and conditions, beyond standard practice, in contracts made with Recovery Act funds,

⁹ SBA SOP 00 11 1, *Small Purchases, Contracts, Grants, and Cooperative agreements*, October 25, 1985.

and that awards be made to qualified contractors. We determined that the contract award for the CRM licenses included the required contract provisions and that steps were taken to ensure the selected contractor was not on the excluded party 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.

Although SBA developed acquisition objectives for the CRM initiative, they were not measurable. Neither the project documents nor the contract files discussed measurable outcomes. There was evidence of standard measures related to information technology purchases from information prepared by the program office. However, the program office did not address the measurable outcomes for the CRM initiative. For example, both the project and acquisition plans merely stated that the CRM project will:

- improve efficiencies of lenders and business outreach and market team stimulus activity;
- provide the foundation for future long-term customer relationship process reengineering and improvement initiatives;
- enhance field operations' productivity; and
- improve customer experience by centralizing customer contact data, facilitating consistent service delivery, and organizing customer communications across the SBA.

Beyond these general objective statements, the plans did not discuss how the attainment of these objectives would be measured. Lack of measurable outcomes may lead to subjectivity in assessment of program effectiveness and inadequate expenditure of funds.

Solicitation and Transparency Requirements of the Recovery Act

The contracting officer did not post the solicitations for CRM software licenses or integration support on FedBizOpps until both contracts were awarded to Copper River and DRT. According to FAR Part 5.202(a)(4), a contracting officer is not required to post a solicitation on FedBizOpps for an 8(a) sole-source contract. Therefore, the contracting officer acted in accordance with the FAR in not

publicizing the DRT solicitation prior to award. However, because the CRM software license procurement did not qualify as an 8(a) procurement, the contracting officer should have publicized the solicitation on FedBizOpps for the contract awarded to Copper River as required by the Recovery Act, or selected a minimum of three vendors from a federal supply schedule to promote competition.

RECOMMENDATIONS

We recommend that the AA for M&A:

1. Take steps to ensure that no procurement action is taken prior to the approval of an acquisition plan by the AA for M&A.
2. Provide training to SBA contracting officers regarding the CFR, Title 13, Part 121, *Small Business Size Regulations*, with regard to ostensible subcontracting and non-manufacturer rules.
3. Exclude the CRM contract awarded to Copper River from SBA calculations used to determine the number of 8(a) program contracts and small business contracts for fiscal year 2009.
4. Formalize the contract approval process by establishing a business clearance form to ensure that all procurements undergo a review by the OGC and all required parties prior to award.
5. Work with the OCIO to establish measurable outcomes for the CRM initiative and identify the likelihood that a contractor could meet measurable outcomes in contract evaluation criteria for any future contracts under this initiative.
6. Revise Agency procedures to clarify that small business and 8(a) set aside contracts cannot be used as “pass through” contracts to purchase products from large businesses unless the small business or 8(a) contractor makes changes or revisions to the product which add demonstrable value.

AGENCY COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

On May 12, 2010, we provided a draft of this report to SBA's Office of Management and Administration for comment. On June 14, 2010, SBA submitted its formal comments, which are contained in their entirety in Appendix I. Management agreed with recommendations 1, 2, and 5; partially agreed with recommendation 4; and neither agreed nor disagreed with recommendations 3 and 6. The Agency's comments and our evaluation of them are summarized below.

Management Comments

Comment 1

Management stated that they disagreed with several of the comments and conclusions made within this report regarding the use of sole-source contracting through the 8(a) program. Specifically, management disagreed with our statement that SBA's acquisition approach did not promote competition as required by the Recovery Act and OMB guidance. Management stated that the Recovery Act did not limit procuring agencies from using sole-source 8(a) contracts. According to management, the issue is whether or not the contract awarded to Copper River qualifies as a small business set aside or an 8(a) award.

OIG Response

We agree with management's comment that Recovery Act and OMB guidance does not limit the use of sole-source contracting through the 8(a) program. However, the procurement of Microsoft Dynamics CRM licenses did not qualify for a small business or 8(a) contract. OMB, *Updated Implementation Guidance for the American Recovery and Reinvestment Act of 2009*, dated April 3, 2009, states that contracts using Recovery Act funds shall be awarded as fixed-price contracts using competitive procedures to the maximum extent practicable. This guidance 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. However, procurements above the noncompetitive threshold and those which do not qualify for 8(a) procurement should use competitive procedures to ensure fair market prices.

Recommendation 1*Management Comments*

Management agreed with the recommendation and stated that it will review and revise Agency guidance as deemed appropriate.

OIG Response

Management comments were responsive to our recommendation. We concur with SBA's decision to review, and as appropriate, revise Agency guidance.

Recommendation 2*Management Comments*

Management agreed with the recommendation and stated that it would provide training to contracting officers.

OIG Response

Management comments were responsive to our recommendation.

Recommendation 3*Management Comments*

Management did not state whether it agreed or disagreed with the recommendation. However, management stated that the Division of Procurement and Grants Management and OGC would conduct an independent review of the CRM contract and take appropriate action based on the review results.

OIG Response

We consider management comments to be responsive to our recommendation.

Recommendation 4*Management Comments*

Management partially agreed with the recommendation. Management stated that a business clearance form already exists; however, this form does not stipulate requirements for review by OGC. Management also stated that it will take steps to

revise the business clearance form to identify the contract actions it believes should undergo legal review prior to award.

OIG Response

Management comments were responsive to the recommendation.

Recommendation 5

Management Comments

Management agreed with this recommendation. Management stated that the CRM project was initiated as a pilot with the intent of demonstrating the flexibilities of the tool and its potential long-term benefits. According to management, lessons learned from the CRM initiative will enable the Agency to establish clear and attainable outcomes for future CRM projects.

OIG Response

Management comments were responsive to the recommendation.

Recommendation 6

Management Comments

Management did not state whether they agreed or disagreed with the recommendation. Instead, management stated that the rules governing performance requirements applicable to set-aside contracts are set forth in existing regulations. Management also stated that training completed in response to Recommendation 2 would satisfy this recommendation.

OIG Response

Management comments were partially responsive. We concur with management's decision to provide training to the contracting officers in response to Recommendation 2. However, the effectiveness of this training will be limited by SBA's outdated guidance. Standard Operating Procedure (SOP) 00 11 1 was issued in October 1985 and does not reflect current regulations. In meetings with the audit team, both the AA for M&A and the Acting Director for the Office of Business Operations acknowledged that contracting personnel were not familiar with this guidance because it was out of date and not relevant. Therefore, SOP 00 11 1 must be revised to reinforce existing CFR and FAR requirements on 8(a) set-aside contracts and prohibit 8(a) set-aside contracts from being used as

“pass through” contracts to purchase products from large businesses unless the small business or 8(a) contractor makes changes to the product that add demonstrable value.

ACTIONS REQUIRED

Please provide your management decision for each recommendation on the attached SBA Forms 1824, *Recommendation Action Sheet*, within 30 days from the date of this report. Your decision should identify the specific action(s) taken or planned for each recommendation and the target date(s) for completion.

We appreciate the courtesies and cooperation of the Small Business Administration during this review. 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]



**U.S. Small Business Administration
Washington, D.C. 20416**

DATE: June 14, 2010

TO: Debra S. Ritt
Assistant Inspector General for Auditing
/S/ original signed

FROM: Darryl K. Hairston
Associate Administrator
Office of Management and Administration

SUBJECT: Draft Report on the Small Business Administration's (SBA) Planning and Award of the Customer Relationship Management Contracts, Project No. 9516

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

Based on our review, there are several comments and conclusions regarding the use of sole source contracting through the 8(a) Business Development (BD) program with which we do not agree. 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 are the Agency's responses to the IG's recommendations:

Recommendation # 1 – 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.

Recommendation # 2 – Provide Training to SBA contracting officers regarding the CFR, Title 13, Part 121, Small Business Size Regulations, with regard to ostensible subcontracting and non-manufacturer rules.

We agree with this recommendation and will provide contracting officers training regarding this subject as well as other relevant small business program issues.

Recommendation # 3 – Exclude the CRM contract awarded to Copper River from SBA calculations used to determine the number of 8(a) program contracts and small business contracts for fiscal year 2009.

The Division of Procurement and Grants Management, along with the Office of General Counsel, will conduct an independent review of this contract. Based on the outcome of this review, appropriate action will be taken regarding the recording of this contract and its associated value.

Recommendation # 4 – Formalize the contract approval process by establishing a business clearance form to ensure that all procurements undergo a review by the OGC and all required parties prior to award.

We partially agree with this recommendation. While the referenced business clearance form currently exists, it does not stipulate requirements for review by the Office of General Counsel. We will take steps to revise this form to identify those contract actions that must undergo legal review before award.

Recommendation # 5 – Work with the OCIO to establish measurable outcomes for the CRM initiative and identify the likelihood that a contractor could meet measurable outcomes in contract evaluation criteria for any future contracts under this initiative.

We agree with this recommendation. This project was initiated as a pilot with the primary intent of demonstrating the flexibilities of the tool and its potential long-term benefits. Lessons learned from the initial endeavor will enable the Agency to establish clear and attainable outcomes for future CRM related projects.

Recommendation # 6 – Revise Agency procedures to clarify that a small business and 8(a) set-aside contracts cannot be used as “pass through” contracts to purchase products from large business unless the small business or 8(a) contractor makes changes or revisions to the product which add demonstrable value.

The rules governing the performance requirements applicable to set-aside contracts, as well as the requirements of the non-manufacturer rule, are set forth in existing regulations. 13 C.F.R. §§ 121.406, 125.6; Federal Acquisition Regulation § 52.219-14. The completion of the training in response to Recommendation # 2 of the draft report will serve to satisfy this concern.

Thank you again for your review.