

U.S. SMALL BUSINESS ADMINISTRATION

OFFICE OF INSPECTOR GENERAL

SBA's Awards for Staffing Support for COVID-19 Economic Relief Loan Programs



Evaluation Report

Report 23-11

July 26, 2023



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NOTICE:

Pursuant to the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023, Public Law 117-263, Section 5274, any nongovernmental organizations and business entities identified in this report have the opportunity to submit a written response for the purpose of clarifying or providing additional context as it relates to any specific reference contained herein. Comments must be submitted to AIGA@sba.gov within 30 days of the final report issuance date. We request that any comments be no longer than two pages, Section 508 compliant, and free from any proprietary or otherwise sensitive information. The comments will be appended to this report and posted on our public website.



U.S. Small Business Administration Office of Inspector General

EXECUTIVE SUMMARY

SBA's Awards for Staffing Support for COVID-19 Economic Relief Loan Programs (Report 23-11)

What OIG Reviewed

We reviewed the U.S. Small Business Administration's (SBA) blanket purchase agreement with Highlight Technologies, LLC for loan support services. Over the course of SBA's contractual relationship with Highlight from 2017 to 2021, SBA issued 29 separate contracts, known as call orders, totaling \$254 million, to assist with necessary loan support services. Specific to Coronavirus Disease 2019 (COVID-19) pandemic needs, SBA awarded 4 of the 29 orders, totaling \$234 million, from April 2020 through June 2021.

The objectives of this review were to determine whether SBA 1) issued the blanket purchase agreement, orders related to COVID-19, and contract modifications in accordance with federal regulations and written policies and procedures; and 2) effectively monitored contractor compliance with small business set-aside subcontracting limitations.

What OIG Found

To meet the increased demand for COVID-19 loan program support services, SBA issued labor hour contracts, e.g. call orders, using an existing blanket purchase agreement.

However, SBA contracting officials did not always perform adequate price analyses, awarding contracts that were not the best use of taxpayer funds. SBA did not establish adequate guidance to ensure contracting officials consistently followed federal regulations. Regulations guide contracting officials in negotiating fair and reasonable prices for goods and services, ensuring taxpayer funds are spent prudently.

Specifically, contracting officials modified a critical contract term that allowed Highlight to bill the government using labor rates that were higher than originally contracted, without a reasonable

basis for doing so. Instead of using the rates originally contracted for each loan center, officials approved that all labor rates could be billed at the Washington, D.C. region rates, which were the highest rates of all regions proposed. Consequently, we found SBA paid at least \$3.8 million more in just 1 year due to labor rate adjustments without any added benefit received. Additionally, SBA missed opportunities for savings on high volume orders because contracting officials did not consistently seek discounts as required by Federal Acquisition Regulations.

We also found that SBA did not actively monitor call orders to ensure compliance with the Limitation on Subcontracting Rule, which resulted in Highlight assigning more than 50 percent of its work on five orders to subcontractors who should not have received the majority of the work. As a result, an excess of \$1.2 million of contract costs went to businesses that did not meet eligibility standards for the set-aside contracts meant to benefit the small business community.

What OIG Recommended

We made four recommendations for the agency to update guidance to clarify price analysis requirements, document discount requests, and evaluate compliance with limitations on subcontracting.

Agency Response

SBA management agreed or partially agreed with two recommendations and disagreed with two recommendations. Management's planned action to require contracting officers to seek price reductions for blanket purchase agreements and call orders resolved recommendation 2.

We did not reach resolution on recommendations 1, 3, and 4. OIG will seek resolution in accordance with our audit follow-up policy.



**OFFICE OF INSPECTOR GENERAL
U.S. SMALL BUSINESS ADMINISTRATION**

MEMORANDUM

Date: July 26, 2023

To: Isabella Casillas Guzman
Administrator

From: Hannibal "Mike" Ware
Inspector General

A handwritten signature in black ink, appearing to be "H. Ware", written over the printed name of the sender.

Subject: Evaluation of SBA's Awards for Staffing Support for COVID-19 Economic Relief Loan Programs (Report 23-11)

This report represents the results of our evaluation of *SBA's Awards for Staffing Support for COVID-19 Economic Relief Loan Programs*. We considered management comments on the draft of this report when preparing the final report. SBA management agreed with our recommendation.

We appreciate the cooperation and courtesies 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: Arthur Plews, Chief of Staff, Office of the Administrator
Therese Meers, General Counsel, Office of General Counsel
Peggy Delinois Hamilton, Special Counsel for Enterprise Risk, Office of the Administrator
Katherine Aaby, Associate Administrator, Office of Performance, Planning,
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Melissa Atwood, Director, Office of Financial Operations and Acquisition
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Introduction

The Coronavirus Aid, Relief, and Economic Security Act, enacted on March 27, 2020, and subsequent pandemic economic assistance legislation¹ provided emergency financial assistance to entrepreneurs and small business owners adversely affected by the Coronavirus Disease 2019 (COVID-19) pandemic.

The U.S. Small Business Administration (SBA) used an existing staff support and management services contract with Highlight Technologies, LLC for loan support services. Specifically, over the course of SBA's contractual relationship with Highlight from 2017 to 2021, SBA issued 29 separate contracts, known as call orders, totaling \$254 million, to assist with necessary loan support services. Specific to COVID-19 pandemic programs, SBA awarded 4 of the 29 orders, totaling approximately \$234 million, from April 2020 through June 2021.

Pandemic Loan Programs

SBA contracted with Highlight to provide loan assistance support on two major programs:

Paycheck Protection Program (PPP)

SBA awarded nearly \$800 billion in fully guaranteed SBA loans under the PPP to eligible small businesses, individuals, and nonprofit organizations adversely affected by the pandemic. Recipients were able to qualify for PPP loan forgiveness if the proceeds were used for allowable expenses as required by the pandemic relief programs. Highlight assisted with processing applications, performing risk management, financial analysis, and key functions to support loan systems and processing.

¹ Public L. No. 116-142, Paycheck Protection Program Flexibility Act of 2020 and Public L. No. 117-2, American Rescue Plan Act of 2021.

COVID-19 Economic Injury Disaster Loans (EIDL)

SBA awarded nearly \$380 billion in COVID-19 EIDL loans. EIDL loans provide low-interest capital to eligible small businesses, small agricultural cooperatives, and most private nonprofits to help with economic loss from the pandemic. Highlight assisted with loan processing and disbursement functions.

Urgent Staffing Support Needs

In 2017, SBA used an existing contract with General Services Administration (GSA), called a schedule, to issue a blanket purchase agreement² to Highlight as a single awardee using the existing labor rates. A GSA schedule is a government-wide contract with companies that provides customers with access to millions of products and services for purchase. A blanket purchase agreement is used by contracting officers to save time when purchasing goods or services that officials know will be ordered repeatedly, reducing the work required for future orders with the selected businesses.

SBA's 2017 blanket purchase agreement with Highlight was established under a competitive 8(a) Business Development Program set-aside award, which is a contracting opportunity that limits competition to socially and economically disadvantaged firms that have received business development assistance from SBA. The purpose of setting aside government contracts for small business is to diversify the economy by helping more entrepreneurs compete in the federal marketplace. At the time it was awarded, the agreement had a potential value of \$20 million over a 5-year period. SBA selected Highlight's proposal from seven other 8(a) businesses because it provided the best value to the government. When the COVID-19 pandemic hit, creating unprecedented demand in SBA loans, contracting officers were able to draw on this 2017 agreement to issue labor hour contracts to quickly staff up and meet the demand of pandemic assistance response.

² FAR 13.303-1 Blanket Purchase Agreements – General.

Objectives

The objectives of our evaluation were to determine whether SBA 1) issued the blanket purchase agreement, call orders related to COVID-19, and contract modifications in accordance with federal regulations and written policies and procedures; and 2) effectively monitored contractor compliance with small business set-aside subcontracting limitations.

Results

At the start of the pandemic, SBA maximized its agreement with Highlight to quickly tackle the high volume of loan processing services that would be required to meet the needs of struggling small businesses during the pandemic. Contracting officials were able to expedite a series of call orders to support the implementation of the PPP and COVID-19 EIDL programs.

Although SBA adhered to Federal Acquisition Regulations (FAR) in administering some of the call orders to Highlight, we found inconsistent practices and instances where SBA's internal controls were not sufficient to ensure contracting officers conducted an adequate price analysis prior to approving a critical modification that allowed Highlight to bill the government using higher labor rates than originally agreed to. This resulted in SBA overpaying the contractor by at least \$3.8 million for staffing services used to administer its COVID-19 pandemic loan programs. Also, SBA did not follow regulations in requesting volume discounts from the contractor for each qualified order.

In addition, we found that SBA did not monitor subcontract limitations which resulted in 5 of 29 orders reviewed significantly exceeding the limitation. The limitation on subcontracting rule ensures that eligible small businesses complete meaningful amounts of the work to gain experience performing on contracts. For these five contracts, Highlight subcontracted more than half of its work to entities that did not meet small business eligibility standards to be able to obtain favorable contracting opportunities intended for small businesses.

Finding 1: Consistent Pricing Practices Would Result in Cost Savings

Contracting officials responded to SBA's high demands for professional support services by using an existing blanket purchase agreement to help administer the COVID-19 pandemic loan programs. We reviewed four high value call orders, totaling \$234 million, issued to support

needs arising from the pandemic (see Table 1). For two of the four orders we reviewed, contracting officials adhered to regulations and written policies, which led to at least \$5.8 million in savings. This demonstrates the value of following policies and regulations when negotiating contracts.

However, for the remaining two orders, contracting officials did not adequately assess contract prices as required by the FAR. Specifically, they did not assess price reasonableness or request discounts on all qualifying orders, thus awarding these orders for loan support services without ensuring they were the best value to the government. SBA did not establish adequate guidance to ensure contracting officials consistently followed federal regulations in seeking the best value. Without adequate justification, SBA overpaid Highlight at least an additional \$3.8 million for commercial loan services (see Appendix 2 for a schedule of questioned costs). We also found that SBA’s contracting office has experienced high staff turnover resulting in a loss of historical knowledge. These issues underscore the need for clear guidance and consistent processes (see Table 1 below).

Table 1: Call Orders for COVID-19 Pandemic Loans

SBA Contracts	Cost	Identified Concerns
Call Order 23	\$103,986,803	Contract modification to change labor rates was not analyzed. Discount was not requested or applied.
Call Order 24	91,848,205	No concerns identified
Call Order 26	19,012,391	Contracted labor rates were not analyzed.
Call Order 27	19,369,984	No concerns identified
Total	\$234,217,384	—

Source: Office of Inspector General analysis of Highlight Technologies contract portfolio as of May 2021, the end of our review period. Minor difference due to rounding.

Price Analysis

Federal regulations require a price evaluation to be completed for the total order when GSA schedule hourly rates are used.³ By placing the order, SBA indicated that the order represented the best value for the government because the listed rates are deemed fair and reasonable.

³ FAR 8.405-3(c)(3) BPAs for hourly-rate services.

However, GSA determined the rates were fair and reasonable based on geographic localities proposed by the contractor.⁴ If the rates are increased, the assessment of fair and reasonableness done by GSA is no longer valid for those localities.

On April 1, 2020, SBA issued Call Order 23 valued at \$103.9 million using Highlight's proposed rates to increase loan staffing. Highlight proposed its rates based on position title and by the specific locality of SBA regional offices where the employees were expected to be assigned according to the Statement of Work. Shortly after performance began, SBA modified the order to allow the contractor to bill all labor categories at the Washington, D.C. rates regardless of which regional offices the employee supported, as these positions were being performed virtually under pandemic conditions.

Contracting officials agreed the change was a "logical streamlined approach because of the contingency environment, as well as [the fact that] the positions could actually be anywhere in the continental United States" and, they "wanted to ensure that the rates would be fair and reasonable across the board for all contractors regardless of location." As a result, SBA issued a modification to change all labor hour rates to the Washington, D.C. rates, which were the highest rates of all proposed regions. A justification as to why the D.C. rates were appropriate was not provided and the contracting officer did not perform an analysis to determine whether the contract would remain the best value for the government.

Each time a contract ceiling price is increased, federal regulations require the contracting officer to conduct a pricing analysis so that any changes to contract terms still ensure they would be in the best interest of the government.⁵ This analysis must consider all relevant factors and be documented in the contract file. The first ceiling increase occurred after the rates were streamlined, and the government cost estimate performed as part of the increase only used the Washington, D.C. rates, number of hours, and cost. This lacked a comparison to rates as originally proposed to serve as a meaningful analysis.

Federal regulations guide contracting officials in negotiating fair and reasonable prices for goods and services, ensuring taxpayer funds are spent appropriately. Agency leaders have the authority to issue regulations to carry out the intent of federal regulations through agency policies and procedures.⁶ For these orders, SBA contracting officials did not perform adequate analyses and executed contracts that were not the best use of taxpayer funds.

⁴ FAR 8.404(d) Use of Federal Supply Schedules.

⁵ FAR 12.207(b)(1)(ii)(C) Special Requirements for the Acquisition of Commercial Items.

⁶ FAR 1.301(a) Agency Acquisition Regulations.

We attribute this issue to recently changed contracting procedures. In December 2015, the Office of Inspector General (OIG) recommended that SBA establish and implement clear, written policies and procedures for preparing independent government cost estimates.⁷ In response, SBA revised its procedures related to preparing estimates; however, those procedures were subsequently removed in 2019.

SBA's procedural reversal was exacerbated by the rush to implement COVID-19 loan programs, along with poor documentation practices, and staff turnover. Consequently, the file for Call Order 23 did not contain an independent government cost estimate to provide insight into what methodology, rationale, or assumptions were used to assess the reasonableness of Highlight's proposed labor rates.

SBA's current acquisition standards for determining price reasonableness do not provide a detailed set of procedures or job aids for adequate analysis. As a result, contracting officials indiscriminately approved the labor rate change without considering the effect, and SBA paid at least an additional \$3.8 million for commercial loan services due to this change.

Table 2 shows the additional amount per hour the contractor was allowed to bill, and the resulting increase in cost for the actual hours billed during the first year of the contract. For example, by invoicing with Washington, D.C. rates, Highlight was allowed to bill for each loan specialist supporting the Little Rock, Arkansas office at \$7.90 more per hour than the originally contracted rate. Since D.C. had the highest pay rate of the four locations, the 196,363 hours billed cost the government \$1.6 million more than the originally contracted rate would have cost.

It is not a prudent business practice for SBA to allow Highlight to charge the government using rates for the most expensive region when most of the work was projected to be performed largely outside of the Washington, D.C. area. At the time contract performance began, the D.C. area rates were approximately 12 percent higher than the rates for locations where much of the work was performed.

⁷SBA Needs to Strengthen Its Information Technology Procurement Practice to Ensure Adequate Planning and Financial Oversight (December 17, 2015).
https://www.oversight.gov/sites/default/files/oig-reports/Report_16-05_SBA_IT_Procurement_Practices.pdf.

Table 2: Rate Differential for Actual Billed Hours

SBA Office Assignment	Position Title	Number of Hours Billed	Differential Between Washington, D.C. Rate and Original Rate	Additional Cost Due to Rate Change
Little Rock, AR	Loan Specialist	196,363	\$7.90	\$1,551,265
Little Rock, AR	Loan Processing Assistant	46,348	\$6.64	307,754
Little Rock, AR	Onsite Supervisor	7,900	\$9.13	72,129
Fresno, CA	Loan Specialist	191,096	\$7.90*	1,509,662
Fresno, CA	Loan Processing Assistant	41,414	\$6.64	274,987
Fresno, CA	Onsite Supervisor	6,848	\$9.13	62,522
Citrus Heights, CA	Loan Specialist	1,394	\$2.05	2,857
Citrus Heights, CA	Loan Processing Assistant	264	\$1.63	430
Total	—	—	—	\$3,781,607

*Differences due to rounding and to a 10-cent decrease in D.C. rate at the start of contract.

Source: OIG analysis of Highlight Technologies April 15, 2021 invoice – invoice costs from April 1, 2020 through April 15, 2021

In a related scenario, when additional loan support was needed at the Dallas-Ft. Worth, Texas office, contracting officials considered adding onto Call Order 24, which was already in place supplying support services for the Texas office, but decided to issue a separate order. Instead of matching the previously negotiated and established rates on Call Order 24, the new order used the same elevated Washington, D.C. rates from Call Order 23. Given the similar work scope between Call Order 24 and the new order, it is not clear why SBA contracted to pay the higher D.C. rates from Call Order 23. An analysis to support the increase in labor costs was not provided.

Practice of Requesting Discounts

The Federal Acquisition Regulation requires agencies to ask for a discount when orders exceed the simplified acquisition threshold, as well as when performing routine reviews of the agreement.⁸ In addition, GSA best practices state that discounts should be explored when negotiating contracts since factors such as order volume, competitive forces, and labor conditions could have impacted prices since the time of setting up the initial GSA schedule⁹ in 2016.

SBA successfully obtained discounts for three of the four orders we reviewed, one of which received a 5 percent discount, resulting in savings of \$5.8 million. However, Call Order 23, which was modified to allow Highlight to bill at higher labor rates, did not include a discount or evidence that one had been requested.

All four orders exceeded the simplified acquisition threshold of \$250,000,¹⁰ which triggered a requirement to seek a discount. But, more significantly, the orders that resulted from the pandemic relief programs were higher in volume than were estimated for the blanket purchase agreement for the entire 5-year period, providing a compelling opportunity for a discount to be negotiated.

SBA contracting officials disagreed that documenting requests for discounts was required and the requirement is not explicitly outlined in the procedures. Considering the tremendous value of the orders, discounts must be fully explored to ensure the best value for the government. Documenting the requests and associated discussions provide contracting details that are useful for future negotiations and provide transparency to meeting contracting regulations.

⁸ FAR 8.405-4 Price Reductions; 8.405-3(e) Review of BPAs.

⁹ U.S. General Services Administration, Schedule Pricing, www.gsa.gov/buy-through-us/purchasing-programs/gsa-multiple-award-schedule/schedule-features/schedule-pricing.

¹⁰ 41 U.S.C § 134 - Simplified Acquisition Threshold.

Recommendations

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

Recommendation 1: Establish and implement policies and procedures on how to use appropriate analysis techniques when determining prices are fair and reasonable when GSA scheduled list prices and rates are adjusted, in accordance with FAR Part 8.

Recommendation 2: Establish and implement policies and procedures to document discount requests for applicable call orders to ensure all possible volume order discounts and changing market conditions are considered at the time of each order, in accordance with FAR 8.405.

Recommendation 3: Determine the total additional amount paid to Highlight Technologies, LLC due to using Washington, D.C. labor rates and pursue any applicable remedies to recover costs.

Finding 2: Consistent Monitoring of Subcontract Limitations Needed for Set-aside Contracts

Highlight stayed within allowable limits in subcontracting work for 24 of the 29 call orders issued under the blanket purchase agreement, ensuring at least 50 percent of the order value was performed by an 8(a) small business. For 5 of 29 orders reviewed, Highlight exceeded the subcontracting limits.

Under the Limitation on Subcontracting Rule for service contracts, small businesses are prohibited from subcontracting more than 50 percent of the contract cost to larger businesses, or to those without program status as a certified 8(a) small business.¹¹ By submitting an offer and performing on the contract, contractors are agreeing not to pay subcontractors amounts more than permitted levels.¹² Although the contractor is expected to demonstrate adherence through maintaining its books and records, contracting officials are required to regularly monitor the contractor's compliance to ensure the majority of the contract is not being paid to large businesses and that contracts are being performed in accordance with stated terms, as part of contract management duties.

¹¹ 13 C.F.R. §125.6 Prime Contractor's Limitations on Subcontracting.

¹² 48 C.F.R. §52.219-14(e) Limitations on Subcontracting.

However, SBA did not ensure Highlight complied with the subcontracting limitation rule. Contracting officials relied on contractors to self-report compliance with the rule and did not monitor the accuracy of self-reported assertions as part of normal management duties. Officials told us that they lacked sufficient resources to be able to perform regular audits and only do so when they become aware of a potential violation.

Federal regulations require officials to review compliance with subcontracting limits at the conclusion of an order, which could then be used as a factor in the contractor's performance rating to justify awarding additional orders.¹³ SBA was not able to make meaningful determinations on the division of labor and the percentage of subcontracted work from the invoices provided by Highlight.

Contracting officials have the authority to request information in connection with a contractor's compliance with the limitations rule.¹⁴ The regulation emphasizes the contracting officer has the discretion to request this information at any point during performance or upon completion of the contract. For blanket purchase agreements, the subcontractor limitation applies to the period of performance for each order and not on the combined value of the call orders.¹⁵

Based on our review of Highlight's orders, we question \$1.2 million in total payments made on subcontracts exceeding the 50 percent limit (see Table 3). For example, Highlight invoiced \$681,152 for Call Order 3. The contractor is allowed to subcontract out up to half of the work to businesses not eligible for the set-aside contract. Instead, Highlight contracted out \$182,808 more than the allowable limit. This means that Highlight subcontracted out 77 percent of the contract value.

For the five call orders listed in Table 3, SBA awarded Highlight nearly \$2.9 million. However, Highlight subcontracted nearly \$2.7 million to businesses not eligible for set-aside contracts, which meant the small business retained only \$200,000 among the five awards. In total, Highlight exceeded the 50 percent subcontracting limit by \$1.2 million.

¹³ 13 C.F.R. §125.6(d) Prime Contractor's Limitations on Subcontracting; FAR 42.1503(b)(2)(vi) *Procedures*, Subpart to Contractor Performance Information.

¹⁴ 13 C.F.R. §125.6(e)(4) Inapplicability of Limitations on Subcontracting.

¹⁵ 13 C.F.R. §125.6(d) Determining Compliance with Applicable Limitation on Subcontracting.

Table 3: Call Orders Exceeding Limitation on Subcontracting Rule

SBA Contracts	Total Invoiced*	Total Amount Paid to Other-than-Small Subcontractors	Percentage Subcontracted to Ineligible Businesses	Amount Paid to Subcontractors that Exceeded the Limit
Call Order 3	\$681,152	\$523,384	77%	\$182,808
Call Order 5	\$568,219	\$555,025	98%	\$270,916
Call Order 12	\$261,727	\$253,891	97%	\$123,028
Call Order 15	\$339,836	\$330,023	97%	\$160,105
Call Order 22	\$1,023,287	\$1,003,562	98%	\$491,918
Total	\$2,874,221*	\$2,665,885	93%**	\$1,228,775

*Total invoiced as of June 30, 2021, the end of our review period.

**Average percentage subcontracted out on identified call orders.

Source: OIG analysis of Highlight Technologies call order summary

As the main advocate for small businesses, SBA needs to safeguard contracting benefits meant for intended recipients. We reported a similar finding and made several recommendations in OIG’s evaluation of a contract SBA awarded for disaster loan recommendation services, which will be resolved under that evaluation.¹⁶ Therefore, we are not making any new recommendations to implement additional controls but recommend assessing the financial impact of not complying with the rule.

Recommendations

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

Recommendation 4: Evaluate all call orders issued under the Highlight blanket purchase agreement for compliance with the Limitation on Subcontracting Rule per 13 CFR § 125.6 and pursue any applicable remedies.

¹⁶ SBA Office of Inspector General, 22-10, *Evaluation of SBA’s Contract for Disaster Assistance Loan Recommendation Services* (April 14, 2022). <https://www.oversight.gov/report/SBA/Evaluation-SBA’s-Disaster-Assistance-Loan-Recommendation-Services>.

Evaluation of Agency Response

SBA management provided formal comments to our draft report, which are included in their entirety in Appendix 3. Management agreed or partially agreed with two recommendations and disagreed with two recommendations. We found that the agency's planned actions resolved one recommendation but are not sufficient to resolve three of the 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 Recommendation(s)

The following section summarizes the status of our recommendation(s) and the actions necessary to close them.

Recommendation 1

We recommend the Administrator require the Associate Administrator for the Office of Performance, Planning, and the Chief Financial Officer to establish and implement policies and procedures on how to use appropriate analysis techniques when determining prices are fair and reasonable when GSA scheduled list prices and rates are adjusted, in accordance with FAR Part 8.

Status: Unresolved.

Management disagreed with this recommendation, stating that the agency is not required to make a separate determination of fair and reasonable pricing when GSA established this determination as outlined in FAR 8.404(d).

However, management's basis for disagreement does not consider part of the FAR clause cited that warns against accepting a determination of reasonableness without performing a price evaluation.¹⁷ According to the referenced subsection, ordering activities are required to evaluate the level of effort and the mix of labor proposed to perform a specific task being ordered, and for determining that the total price is reasonable. Although the language in FAR part 8 did not clearly state that when contracting officials deviate from the scheduled rates to perform a price

¹⁷ FAR 8.404(d) Use of Federal Supply Schedules.

evaluation, the guidance to evaluate other components (level of effort and mix of labor) is distinct for contracts using a Blanket Purchase Agreement for hourly rate services.¹⁸

Accordingly, we maintain our position that SBA should establish and implement policies and procedures to address when GSA scheduled rates are adjusted. Contracting officials, when ordering with scheduled rates, are required to perform an appropriate price evaluation when other factors need to be considered to understand the total order price. At a minimum, an analysis to understand the impact of the sweeping rate change should have been performed.

This recommendation can be closed when management provides evidence that it has implemented policies and procedures on how to use appropriate analysis techniques when determining prices are fair and reasonable when GSA scheduled list prices and rates are adjusted, in accordance with FAR part 8.

Recommendation 2

We recommend the Administrator require the Associate Administrator for the Office of Performance, Planning, and the Chief Financial Officer to establish and implement policies and procedures to document discount requests for applicable call orders to ensure all possible volume order discounts and changing market conditions are considered at the time of each order, in accordance with FAR 8.405.

Status: Resolved.

Management agreed with the recommendation, stating that it would clarify in its standard operating procedures that contracting officers are required to seek price reductions at the establishment of the blanket purchase agreement and when call orders from the agreement exceed the Simplified Acquisition Threshold. Management plans to complete final action on this recommendation by October 1, 2023.

This recommendation can be closed when management provides evidence that SOP changes have been implemented to ensure contracting personnel seek price reductions as required.

¹⁸ FAR 8.405-3(c)(3) BPAs for hourly rate services; FAR 8.405-3 Blanket purchase agreements (BPAs).

Recommendation 3

We recommend the Administrator require the Associate Administrator for the Office of Performance, Planning, and the Chief Financial Officer to determine the total additional amount paid to Highlight Technologies, LLC due to using Washington, D.C. labor rates and pursue any applicable remedies to recover costs.

Status: Unresolved.

Management disagreed with this recommendation, stating that the rates were negotiated in good faith between SBA and the contractor and were within the approved rate range. Management emphasized that due to the COVID-19 emergency, many federal contractors were moved to a remote work posture. Management also stated there was no time to track and reconcile locations from where personnel were physically working to support specific tasks due to the historic and evolving emergency. As a result, the contracting officer determined that paying the Washington, D.C. rate was the most expeditious solution in response to the emergency. In addition, Management stated there was not a business or legal case to claim an “overpayment” was made to the contractor, nor is there a precedent for recouping costs where the rates were mutually agreed to, even if in hindsight there might be questions on the initial business decision.

We maintain our position that SBA made a significant modification without evaluating the cost impact of selecting the highest available rate to apply to all locations and future call orders. It is important to note that the original Call Order 23 was already contracted to support regional offices virtually. Workforce plans and locations were already in place, with business being conducted virtually in accordance with the statement of work. The decision to bill using Washington, D.C. rates was almost 2 weeks after performance began. Absent a sudden overnight change in remote work status, SBA was not in a situation where it had to make a drastic decision without being able to perform a basic analysis with workforce data that was readily available. Therefore, management’s decision to increase rates without an understanding of the cost impact did not demonstrate prudent actions.

Moreover, this decision led to issuing subsequent orders using the same Washington D.C. rates, falsely establishing precedent that using adjusted rates for later call orders without sufficient analysis was an acceptable and reasonable practice. Even given the extenuating circumstances, performing an evaluation of the price difference was unlikely to have caused a significant delay. The contractor had already been engaged to hire and perform the assigned work under the initial call order.

Without consideration being given to the cost impact, the contracting officer did not ensure that the decision could be fully supported.

We noted management's concern of using the term "overpayment" for recouping some contract costs. We have modified the recommendation but have kept it consistent with the underlying intent to identify the additional amount paid to the contractor using the Washington D.C. labor rates.

This recommendation can be closed when management provides evidence that it has conducted an appropriate analysis of contract costs impacted by the rate change.

Recommendation 4

We recommend the Administrator require the Associate Administrator for the Office of Performance, Planning, and the Chief Financial Officer to evaluate all call orders issued under the Highlight blanket purchase agreement for compliance with the Limitation on Subcontracting Rule per 13 CFR § 125.6 and pursue any applicable remedies.

Status: Unresolved.

Management partially agreed with this recommendation, stating that the contracting officer will examine compliance at the BPA level and report any violations of the Limitation on Subcontracting Rule to OIG. Management stated that OIG would then pursue monetary remedies through the Department of Justice. Management disagreed with our conclusion that the Limitation on Subcontracting rule should be applied at the call order level. Instead, management believes the rule should be applied at the blanket purchase agreement level but did not justify the basis of their belief.

We maintain our position that the call orders should be individually evaluated under the Limitation on Subcontracting Rule. As explained earlier in this report, the Limitation on Subcontracting Rule states that under a contract for services, the contractor will not pay more than 50 percent of the amount paid by the government to firms that are not similarly situated. According to SBA's regulations, an order issued under an agreement such as a blanket purchase agreement is the contract.¹⁹ FAR 2.101 further clarifies that the contract is the mutually binding legal relationship that obligates the seller to provide the service and the Government to pay for the service.

¹⁹ 13 CFR § 125.1.

In the case of a blanket purchase agreement, it is a contracting vehicle to add efficiency to the procurement process. However, the call order establishes the contractual obligation between the contractor and the Government. A blanket purchase agreement itself does not obligate the Government to commit to any future purchases when it is established, nor does it provide for a minimum order guarantee to the contractor. It functions as a menu of supplies and services available to federal agencies at a listed price.

Also, the Inspectors General Act requires each Inspector General to “report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law.”²⁰ Pursuing monetary remedies under a Blanket Purchase Agreement is an action in contracts law under the terms of the BPA absent any evidence that it is a criminal law matter. SBA did not provide any evidence, or make a referral for OIG investigation, that the contractor’s noncompliance was criminal in nature. The responsibility of pursuing any remedy under a government contract belongs to the contracting officer.²¹

This recommendation can be closed when management provides evidence that it conducted an evaluation of call orders issued under the blanket purchase agreement to determine compliance with the Limitation on Subcontracting Rule and pursues applicable remedies.

²⁰ 5 U.S.C. 404(d).

²¹ FAR section 1.602-2.

Appendix 1: Objectives, Scope, and Methodology

Objectives

The objectives of our evaluation were to determine whether SBA 1) issued the blanket purchase agreement, call orders related to COVID-19, and contract modifications to Highlight Technologies, LLC in accordance with federal regulations and written policies and procedures and 2) effectively monitored contractor compliance with small business set-aside subcontracting limitations.

Scope and Methodology

We reviewed SBA's acquisition practices in awarding the April 2017 blanket purchase agreement, SBAHQ-17-A-0016, and orders issued to Highlight under the agreement. To meet our audit objectives, we reviewed applicable public laws, federal regulations, and SBA policies and procedures. We interviewed contracting officials responsible for awarding SBA contracts, issuing contract modifications, and monitoring contractor performance on the orders. We reviewed procurement files and contracts, as well as invoices and subcontract agreements provided by Highlight.

For our review of award practices, we judgmentally selected the four highest-value call orders (23, 24, 26, and 27) of 29, totaling \$234 million, to gain an understanding of contracting procedures used to support the SBA offices of capital access and disaster assistance (see Table 1-1). Our selection represents 92 percent of all order funds issued against the agreement between March 27, 2020 and June 16, 2021. Our analysis was limited to the locations and job titles that were accepted in the original order with the SBA Office of Capital Access. Due to emerging staffing needs, there were other labor categories that were billed but not originally proposed and therefore, not included in this analysis. Overtime hours billed were excluded from our analysis and would have also increased the cost impact.

For our review of the Limitations on Subcontracting Rule, we reviewed invoice details for all 29 orders issued through June 16, 2021 to analyze the breakdown of billed contract costs between Highlight and its subcontractors.

Table 1-1: All 29 Call Orders Reviewed for Contractor’s Compliance with Subcontracting Limitation Rule

SBA Contract	Official Contract Number	Date Issued	Value of Base and Exercised Options
Call Order 1	SBA0001	05/19/2017	\$567,061
Call Order 2	SBA0002	06/23/2017	350,009
Call Order 3	SBA0003	07/07/2017	837,529
Call Order 4	SBA0004	07/06/2017	86,016
Call Order 5	SBA0005	09/08/2017	568,219
Call Order 6	SBA0006	08/10/2017	351,458
Call Order 7	SBA0007	08/31/2017	229,096
Call Order 8	SBA0008	08/31/2017	2,585,141
Call Order 9	73351018F0099	03/13/2018	178,321
Call Order 10	73351018F0101	03/15/2018	18,697
Call Order 11	73351018F0134	04/10/2018	754,956
Call Order 12	73351018F0162	06/04/2018	265,042
Call Order 13	73351018F0192	07/16/2018	2,801,037
Call Order 14	73351018F0205	08/28/2018	419,709
Call Order 15	73351019F0013	12/07/2018	365,451
Call Order 16	73351019F0056	03/19/2019	295,507
Call Order 17	73351019F0057	03/19/2019	709,522
Call Order 18	73351019F0122	06/06/2019	890,381
Call Order 19	73351019F0127	06/07/2019	1,146,410
Call Order 20	73351020F0022	02/28/2020	2,916,322
Call Order 21	73351020F0031	02/27/2020	1,285,454
Call Order 22	73351020F0039	02/28/2020	1,702,284
Call Order 23	73351020F0076	04/01/2020	103,986,803
Call Order 24	73351020F0125	04/23/2020	91,848,205
Call Order 25	73351020F0147	06/23/2020	Cancelled
Call Order 26	73351020F0175	07/15/2020	19,012,391
Call Order 27	73351021F0012	02/12/2021	19,369,984
Call Order 28	73351021F0029	04/12/2021	158,685
Call Order 29	73351021F0077	06/16/2021	—
Total	—	—	\$253,699,690

We conducted this evaluation in accordance with the Council of the Inspectors General on Integrity and Efficiency *Quality Standards for Inspections and Evaluations*. 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 evaluation objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our evaluation objectives.

Use of Computer-processed Data

We obtained computer-processed data reported on the SAM.gov website and the Joint Accounting and Administrative Management System. SAM.gov contained the contract dollars associated with Highlight's agreement for call orders through April 30, 2021. We reconciled award generated totals from SAM.gov to contract details. We verified Highlight's roster of subcontractors paid to small business certifications reported on SAM.gov. We reviewed Highlight's invoices submitted through the Joint Accounting and Administrative Management System, used by SBA to approve contractor invoices. We determined the computer processed information and invoices were reliable for the purposes of this review.

Appendix 2: 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 2-1: OIG Schedule of Questioned Costs

Description	Amount	Explanation
Excess contract costs	\$3,781,607	Unreasonable costs paid without an adequate price evaluation per FAR 8.405-3(c)3.
Excess payments to ineligible subcontractors	1,228,775	Amount of costs paid in excess of subcontracting limitations per 13 CFR § 125.6(a)(1) and associated penalties per 6(g).
Total	\$5,010,382	—

Source: OIG generated analysis based on the contractor invoice and subcontractor tracking data provided by Highlight Technologies

Appendix 3: Agency Response

U.S. Small Business Administration
Response to Report




U.S. SMALL BUSINESS ADMINISTRATION

WASHINGTON, D.C. 20416

Date: June 15, 2023

To: Hannibal “Mike” Ware
Inspector General
Office of the Inspector General (OIG)

From: Patrick Ingram 
Chief Acquisition Officer
Office of Performance, Planning, and the Chief Financial Officer (OPPCFO)

Subject: Evaluation of SBA’s Awards (Highlight) for Staffing Support for COVID-19 Economic Relief Loan Programs.

OPPCFO recognizes and appreciates the opportunity to provide a response to the subject OIG report. We have carefully considered each recommendation and look forward to working with OIG to seek a path to strengthening procurement operations moving forward. As part of our internal efforts to strengthen compliance with Federal and Agency level regulations, we make continuous revisions to the SBA internal Review Process, which guide Policy Analysts (PA) in their review of actions during pre-solicitation, pre-award, and post-award phases. Additionally, the Office of the Senior Procurement Executive (OSPE) updated its Standard Operating Procedure (SOP) in FY 23 after that SOP had gone without an update for four fiscal years. Moving forward, that SOP will be reviewed and updated as needed on an annual basis to ensure currency with acquisition regulations.

In addition to the action noted above, several personnel actions have been taken that will further strengthen contracting and procurement oversight and expand opportunities for the contracting workforce to be trained on a more regular basis. During Q2 of FY23 the SBA hired my position, the Chief Acquisition Officer (CAO), to provide strategic leadership to not just the contracting function, but also to the program and project management aspects of the Acquisition process. In addition to the CAO, efforts are underway to strengthen the Acquisition Career Manager (ACM) position. The ACM function is currently an other-duty-as-assigned to a full-time PA, but will become more strategically aligned with a dedicated PA (billet has been requested, but not yet approved), whose primary focus will be on training opportunities, acquisition career development and certification.

For context, the BPA reviewed was previously competed on GSA as an 8(a) set aside in 2017 and was awarded to Highlight Technologies to better assist the Office of Capital Access (OCA) in meeting ongoing programmatic requirements. Highlight Technologies, LLC was awarded this BPA through a competitive process and has been successfully performing the orders under this BPA. Prior to the COVID-19 Pandemic, there had been approximately 23 call orders placed against this BPA totaling approximately \$15M. Due to the urgency of the COVID-19 Pandemic and new loan programs established under the CARES Act, the agreement vehicle was used to

rapidly perform loan processing services in support of OCA and Office of Disaster Assistance (ODA). This BPA provided two of the primary labor categories used to facilitate loan processing: Loan Specialist and the Loan Processing Assistants. The Loan Specialist required thorough knowledge of the financial and credit factors related to business, commercial, and/or home loans including business practices and financial structures, pertinent statutory, regulatory, and administrative provisions. These positions required the application of extensive experience and seasoned judgment as well as a broad knowledge and understanding of business systems, elements of good management, financial organization and management, the economic climate for small business, and earning potential of the business enterprise involved. Additionally, it required knowledge and skill in analysis, evaluation and problem solving to identify and define financial management problems and assist in the development of workable solutions. Loan Processing Assistants served in a variety of professional duties necessary to the processing, servicing, liquidating, or other transactions for all types of SBA loans. Guidelines consisted of SBA policies, procedures, directives, and applicable legislation. During pre-COVID performance, contractors worked in SBA facilities in Washington, D.C, Texas, and California; however, during the Pandemic, all positions transitioned, nearly overnight, to a remote status throughout the country.

Recommendation 1: Establish and implement policies and procedures on how to use appropriate analysis techniques when determining prices are fair and reasonable when GSA scheduled list prices and rates are adjusted, in accordance with FAR 8.

Response: Disagree

Explanation: 8.404(d) states "GSA has already determined the prices of supplies and fixed-price services, and rates for services offered at hourly rates, under schedule contracts to be fair and reasonable. Therefore, ordering activities are not required to make a separate determination of fair and reasonable pricing, except for a price evaluation as required by 8.405-2(d). By placing an order against a schedule contract using the procedures in 8.405, the ordering activity has concluded that the order represents the best value (as defined in FAR 2.101) and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc.) to meet the Government's needs."

Proposed Action: None

Recommendation 2: Establish and implement policies and procedures to document discount requests for applicable call orders to ensure all possible volume order discounts and changing market conditions are considered at the time of each order, in accordance with FAR 8.405.

Response: Agree

Proposed Action: FAR 8.405-4 - Price reductions, requires agencies to seek price reductions when "the order or BPA exceeds the simplified acquisition threshold." SBA will clarify in its SOP that price reductions shall be sought at BPA establishment and BPA Call Orders above the Simplified Acquisition Threshold (SAT). While we believe this action goes beyond the current regulatory requirements of the FAR, it should be considered a best practice. The updated SOP will be routed for clearance in the coming weeks and go into effect on October 1, 2023.

Recommendation 3: Determine the total amount of overpayments paid to Highlight Technologies LLC due to using D.C. labor rates and pursue any applicable remedies to recover costs.

Response: Disagree

Explanation: The DC labor rate was negotiated in good faith by the Contractor and Government Contracting Officer and was within the GSA approved rate range for the Contractor. The COVID emergency moved the vast majority of Federal contractors to a remote work posture and displaced millions across the country from their onsite offices nearly overnight. In general contractors were not allowed to report to a physical office location. Due to this historic and evolving emergency, there was not time to track and reconcile locations where contractor's personnel were remotely logging in from in support of statement of work tasks. The Contracting Officer made a determination for expediency and in the best interest of the program that paying one location rate for the Washington D.C. area was an acceptable solution in response to this once in a 100-year emergency. Additionally, there is no business or legal case to claim there was an "overpayment" to Highlight nor precedent for recouping a mutually agreed to and contracted for location rate, even if in hindsight there might be questions on the Contracting Officer's initial business decision now that we are in a more stable post-Pandemic environment.

Action: None

Recommendation 4: Evaluate all call orders issued under the Highlight blanket purchase agreement for compliance with the Limitation on Subcontracting (LoS) Rule per 13 CFR § 125.6 and pursue any applicable remedies.

Response: Partially Agree

Proposed Action: After consulting with the Office of General Counsel, we believe compliance with the LoS should be made at the BPA level versus at each individual BPA Call-Order. The Contracting Officer will examine compliance at the BPA level and report any violations of the LoS to OIG who would have the authority to then pursue monetary remedies through the Department of Justice.