



United States Department of State
and the Broadcasting Board of Governors

Office of Inspector General

SEP 26 2013

Mr. Richard M. Lobo
Director, International Broadcasting Bureau
330 Independence Avenue, SW
Washington, DC 20237

Dear Mr. Lobo:

The Department of State, Office of Inspector General (OIG), Office of Audits, is currently conducting an audit of the Broadcasting Board of Governors (BBG) acquisition functions. The objective of this audit is to determine whether BBG is in compliance with Federal regulations for conducting selected acquisition functions, including contract oversight, in support of the BBG mission.

OIG's Office of Audits analyzed internal BBG policies and procedures, interviewed officials within BBG's Office of Contracts, and reviewed 34 contracts to determine compliance with Federal regulations. Based on the preliminary results of the audit work performed, OIG identified areas of concern within the Office of Contracts that require your immediate attention. These areas include significant noncompliance with the Federal Acquisition Regulation and violations of the Anti-Deficiency Act. These findings are presented in the enclosed report *OIG Outline for Action: Management Attention Needed To Improve Broadcasting Board of Governors Acquisition Functions* (AUD-CG-IB-13-43, September 2013).

Although the recommendations will be included in a report on BBG acquisition functions, immediate action is needed to address the issues identified in the enclosure. Therefore, please provide a response to the recommendations within 10 days of the date of this correspondence.

If you have any questions, please contact Norman P. Brown, Acting Assistant Inspector General for Audits, by email at brownnp2@state.gov or at (202) 284-2600, or Melinda M. Perez, Director, Contracts and Grants Division, by email at perezmm@state.gov or (703) 284-2698.

Sincerely,

Harold W. Geisel
Acting Inspector General

Enclosure: As stated.

cc: U.S. Representative Edward R. Royce, Chairman, Committee on Foreign Affairs
U.S. Representative Eliot L. Engel, Ranking Member, Committee on Foreign Affairs

OIG Outline for Action:
Management Attention Needed To Improve
Broadcasting Board of Governors Acquisition Functions

Office of Inspector General (OIG) audit procedures identified notable areas of concern within the Broadcasting Board of Governors (BBG) Office of Contracts, including noncompliance with the Federal Acquisition Regulation (FAR), a lack of contract oversight, and Anti-Deficiency Act (ADA)¹ violations. Specifically, OIG determined that the FAR was not followed during the pre-solicitation, pre-award, and contract administration phases of the acquisition process, to include not adequately performing full and open competition or price determinations. In addition, BBG did not provide adequate oversight of the acquisition process, evidenced by a lack of contracting officer involvement, a failure to designate contracting officer representatives, and weak quality assurance procedures. Finally, OIG identified two practices that resulted in BBG repeatedly violating the ADA. Specifically, BBG entered into hundreds of personal services contracts without statutory authority, and contractors regularly worked without valid contracts in place. The following provides an overview of the specific areas of concern identified by OIG within the acquisition process.

Pre-Solicitation and Pre-Award Phases. OIG determined that the following pre-solicitation and pre-award phase requirements were not appropriately performed in accordance with the FAR:

- Acquisition planning (*FAR 7.102*) – not appropriately performed.
- Market research (*FAR 10.001(a)*) – not appropriately performed.
- Full and open competition (*FAR 6.101*) – not appropriately performed.
- Justification for Other Than Full and Open Competition (*FAR 6.301*) – not appropriately performed.
- Price Determination (*FAR 13.106-3 and FAR 15.402(a)*) – not appropriately performed.
- Evaluation of Quotations/Offers (*FAR 13.106-2*) – not appropriately performed.
- System for Award Management (*FAR 4.1102*) – registration in the system was not required for overseas contractors.²
- Contract Files (*FAR 4.801(b) and 4.802(a)(1)*) – lack of documentation in or absence of contract files.

Specifically, OIG found that many BBG contracts were not awarded on a competitive basis and noted that BBG awarded service contracts from a quarterly “Sources Sought” announcement on FedBizOpps.gov (FBO), which is not in compliance with the FAR requirement for publicizing contract actions. This FAR requirement states that “each proposed contract action” over \$25,000 must be posted on FBO;³ however, BBG policy states that “the Office of Contracts will publish FBO notices on a quarterly basis on behalf of IBB organizations seeking potential sources for

¹31 U.S.C. § 1341, “Limitation on expending and obligating amounts,” and 31 U.S.C. § 1342, “Limitation on voluntary services.”

²Prospective contractors, including foreign vendors receiving funding over \$25,000, are required to register in the System for Award Management, and were previously required to register in the Central Contractor Registry.

³FAR 5.201, “Synopsis of Proposed Contract Actions.”

announcing, scripting, production services, etc.”⁴ Replies to these very broad “Sources Sought” announcements are referred to the requesting office for evaluation, consideration, and selection, rather than posting a separate notice for each contract action. BBG officials acknowledged that this practice was not in accordance with the FAR.

In addition, OIG found that, based on an estimate provided by an agency official, BBG awarded approximately 660 services contracts that may have been personal in nature. FAR 37.104(b) prohibits the use of personal services contracts without explicit statutory authority. BBG does have statutory authority to enter into personal services contracts,⁵ but the statute limits this authority to 60 personal services contracts. Of the approximate 660 contracts which may have been for personal services, 44 were appropriately classified as personal services contracts while the approximate 616 remaining contracts may have been inappropriately defined as non-personal services contracts or not defined at all, even though the contracts may have been identical in nature to those classified as personal services contracts. BBG’s handling of services contracts is a violation of the ADA, which prohibits “employing personal services exceeding that authorized by law.”

Contract Administration Phase. OIG determined that contract administration phase requirements, to include contract oversight, were not consistently performed in accordance with the FAR:

- Contracting Officer Responsibilities (*FAR 1.602-2*) – contracting officers have little to no involvement in contract administration.
- Designation of Contracting Officer’s Representatives (COR) (*FAR 1.602-2(d)*) – CORs not regularly designated; contractors designated as CORs.
- Contractor Performance Information (*FAR 42.15*) – performance evaluations of contractor performance not prepared when required.
- Quality Assurance (*FAR 46.1*) – quality assurance procedures not always performed or documented.
- Contract Files (*FAR 4.801(b) and 4.802(a)(2)*) – lack of documentation in or absence of contract administration files.

Specifically, OIG found that contractors regularly worked without valid contracts in place, as the majority of services contracts reviewed had been signed by the contracting officer after the period of performance had begun. This occurred because a lack of contract oversight resulted in a lapse in period of performance, whereby the contract expiration dates had passed unnoticed, but contractors had continued to work. In these cases, the contracting officer would grant a “pre-approval” for the vendor to work until funds had been secured for the subsequent contract. Often the “pre-approval” time period was less than 1 week; however, OIG noted multiple instances in which contractors worked for 4–16 weeks without a valid contract in place. To further exacerbate the problem, contracting officers stated that contractors may not have been aware that they were working without a valid contract in place. This is also a violation of the ADA, which

⁴“Contracting for Talent and Other Professional Services Handbook,” 2010, pg. I-2, 4.a.1.

⁵22 U.S.C. § 6206, “Personal Services Contracting Pilot Program.” [Pub. L. 113-6, Div. F, Title I, Sec. 1101].

states that an agency may not “involve [the] government in a contract or obligation for the payment of money before an appropriation is made.”⁶

Conclusion. As a result of significant FAR noncompliance, BBG acquisitions reflected limited or no competition as program offices had generally pre-selected the vendors and had pre-determined the prices; included incorrect statements of work that did not accurately represent the true requirements of the acquisition; inconsistently used contract vehicles to procure products or services; and were improperly awarded for some personal services, which is an ADA violation. Further, because of the lack of contract oversight and deficient evaluation and quality assurance procedures, BBG had little to no assurance that products or services were provided as dictated in the contract terms and conditions; vendors may not have been held accountable for poor performance; deficiencies with contract execution may not have been identified; and contractors often worked without a valid contract in place, which is also an ADA violation.

As such, OIG has determined that the execution of the acquisition process requires your immediate attention to ensure that contracting officials have the incentive and management support to properly implement the FAR, to provide appropriate contract oversight, and to avoid ADA violations.

Recommendation 1. OIG recommends that the Director of the International Broadcasting Bureau immediately cease the use of personal services contracts that violate the Anti-Deficiency Act, take administrative disciplinary action as deemed appropriate, and report immediately to the President, Congress, and Comptroller General all relevant facts and a statement of actions taken, as required by Title 31 U.S. Code Section 1351, “Reports on violations.”

Recommendation 2. OIG recommends that the Director of the International Broadcasting Bureau immediately cease the use of pre-approval for contracts, which violates the Anti-Deficiency Act, take administrative disciplinary action as deemed appropriate, and report immediately to the President, Congress, and Comptroller General all relevant facts and a statement of actions taken, as required by Title 31 U.S. Code Section 1351, “Reports on violations.”

Recommendation 3. OIG recommends that the Director of the International Broadcasting Bureau obtain the assistance of outside experts in Federal acquisition and contracting to conduct an acquisition assessment within the Office of Contracts. The assessment should include, at a minimum: a determination of the extent and full impact of noncompliance with Federal Acquisition Regulation; an action plan for the development and implementation of policies and procedures that ensure acquisition functions are performed in accordance with the Federal Acquisition Regulation; a training curriculum for all contracting officials to enhance education of acquisition regulations and policies; and performance evaluation standards for all pertinent contracting officials which hold officials accountable for the implementation of acquisition policies and procedures.

⁶Office of Management and Budget Circular No. A-11, Part 4, §145.6 states, “You may not obligate against anticipated budgetary resources before they are realized even though the anticipated budgetary resources have been apportioned. If you incur an obligation against an anticipated budgetary resource, such as anticipated spending authority from offsetting collections, then you will have a violation of the Anti-Deficiency Act.”