



Department of Veterans Affairs Office of Inspector General

Evaluation of Selected VA Procurement and Small Business Program Issues

VA procurement officials needed to improve evaluations of contractor performance and effectively review proposed procurements to increase contracting opportunities for small businesses.

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Executive Summary

Introduction

At the request of Senator Christopher S. Bond, the Office of Inspector General (OIG) conducted a limited evaluation to answer two questions:

- When awarding contracts, how does VA evaluate the past performance of bidders, and does VA track actual performance on contracts?
- In designing procurements, what is the level of cooperation between VA procurement staff and VA's Office of Small and Disadvantaged Business Utilization (OSDBU)?

Results of Evaluation

VA contracting officers (COs) usually met the requirement that the past performance of vendors bidding on competitive contracts be evaluated as part of the contract award process. For 23 (92 percent) of 25 competitive contracts reviewed, the COs did use past performance as an evaluation factor in awarding the contracts. However, COs did not routinely evaluate contractor performance when contracts ended. For 9 (60 percent) of 15 completed contracts, the evaluations had not been done.

The level of cooperation between OSDBU and VA procurement officials was generally satisfactory, although there were instances of noncompliance with small business program review procedures. For eight procurements reviewed, there was miscommunication between OSDBU and the Office of Acquisition and Materiel Management (OA&MM) on the small business goals for one proposed procurement and the COs did not request required small business program reviews for two others. In addition, OSDBU and OA&MM did not maintain the management information needed for evaluating the results of small business program reviews.

Recommendations

To improve compliance with requirements for evaluating past contract performance, we recommended that OA&MM remind all VA contracting activities of requirements for evaluating past vendor performance when awarding contracts and for conducting performance evaluations when contract work has been completed. To ensure that small and disadvantaged businesses are properly considered for VA procurements, we recommended that OSDBU and OA&MM develop management information needed for evaluating the results of small business program reviews and clarify and update program responsibilities and procedures.

The Acting Deputy Assistant Secretary for Acquisition and Materiel Management concurred with the findings and recommendation pertaining to evaluation of contractor performance and provided an acceptable implementation plan. The Acting Deputy Assistant Secretary and the

Director, OSDDBU concurred with the findings and recommendation pertaining to small business program reviews and provided an acceptable implementation plan. (See Appendix A, page 7, for the complete text of the Acting Deputy Assistant Secretary's comments and Appendix B, page 8, for the text of the Director, OSDDBU comments.) We will follow up on the planned actions until they are completed.

(original signed by:)
MICHAEL SLACHTA, JR.
Assistant Inspector General for Auditing

Results of Evaluation

Introduction

To address Senator Bond's questions, we discussed relevant policies, practices, and initiatives with officials of OSDDBU, OA&MM, the VA National Acquisition Center (NAC), the VA Central Office Acquisition Operations Service (AOS), one Veterans Integrated Service Network (VISN), and four VA medical centers (VAMCs). In addition, we reviewed contract solicitations and other documentation for a judgement sample of 40 contracts for supplies and services, including 25 national-scope contracts awarded by the NAC, 10 local contracts awarded by 1 VISN and 4 VAMCs, and 5 AOS contracts for interment flags, which were the subject of a previous inquiry by Senator Bond's office.

Our evaluation was done in accordance with generally accepted government auditing standards for staff qualifications, independence, and due professional care; field work standards for planning, supervision, and evidence; and reporting standards for performance audits.

Issue 1 – Evaluation of Past Performance on Contracts

VA contracting officers usually evaluated past performance during the award process for competitive contracts but did not routinely evaluate contractor performance after the contracts were completed. Federal Acquisition Regulations (FAR) require that contracting officers evaluate past performance as a source selection factor for competitive contracts expected to exceed \$100,000 (FAR 15.304c3). This evaluation is intended to provide an indicator of an offeror's ability to successfully meet the performance expectations of the contract. In addition, for competitive and noncompetitive contracts valued at more than \$100,000 COs are required to evaluate contractor performance when the contracted work has been completed (FAR 42.15).

Past Performance Evaluations Usually Performed. Of the 40 contracts reviewed, 25 had been competitively awarded and were subject to the requirement for evaluating past performance. For 23 (92 percent) of the 25 contracts, the COs did use past performance as an evaluation factor in awarding the contracts:

- For 14 (93 percent) of 15 competitively awarded NAC contracts, past performance had been evaluated. For the remaining NAC contract, the relevant contract documents could not be located so we could not determine if past performance had been evaluated.
- Past performance had been evaluated for four (80 percent) of five local contracts. For the other contract, past performance was not evaluated because the CO mistakenly did not consider it to be an important evaluation factor.
- For the five current AOS interment flag contracts competitively awarded to small businesses, the CO evaluated past performance as part of the contractor selection process.

End-of-Contract Evaluations Not Done. Of the 40 contracts reviewed, 15 had been completed and required end-of-contract performance evaluations. The evaluations had not been done for 9 (60 percent) of the 15 contracts:

- For four (80 percent) of five local contracts, evaluations were not done. Two evaluations had not been completed because the COs did not consider evaluations to be a priority, and two had not been completed because the COs were not aware of the evaluation requirement.
- For 5 (50 percent) of 10 NAC contracts, evaluations were not done because some COs prepared formal evaluations only if they were aware of contractor performance problems.

At the time of our review, the five interment flag contracts were ongoing and therefore did not require end-of-contract reviews. However, the CO had been performing monthly interim evaluations covering delivery timeliness, quantities shipped, and product quality. The contracting officer told us that all flag vendors had been meeting contract requirements and that the shortages and shipping delays that occurred under previous contracts had not happened under the current contracts.

Improved Compliance by Implementing an Automated Performance Evaluation System. In February 2002, VA began testing the National Institutes of Health Contractor's Performance System (CPS) at the NAC and AOS. The CPS is a shared, multi-agency automated database that captures, maintains, and disseminates contractor performance evaluation information for use by Federal acquisition offices throughout the world. The CPS captures performance data on quality of the product or service, cost control, timeliness, business practices, and customer satisfaction. The CPS should help COs complete structured contractor performance evaluations when contract work has been completed and will provide a resource for evaluating past performance of prospective vendors when awarding new contracts. Implementation of the CPS is scheduled to be completed in early 2003.

Recommendation 1

We recommended that the Acting Deputy Assistant Secretary for Acquisition and Materiel Management issue guidance reminding all VA contracting activities of the requirements for evaluating vendor past performance as part of the contract award process, for completing end-of-contract evaluations, and for using the CPS as a performance evaluation tool.

Acting Deputy Assistant Secretary for Acquisition and Materiel Management Comments. The Acting Deputy Assistant Secretary concurred with the findings and recommendation.

Implementation Plan. The Acting Deputy Assistant Secretary reported that as of March 2003 OA&MM was developing an information letter to provide guidance to VA contracting activities on the requirements for evaluating vendor past performance as part of contract awards and for completing interim and final contractor performance evaluations. The information letter will also provide guidance for using CPS and another evaluation tool, the Past Performance Information Retrieval System. The information letter should be issued by April 30, 2003. In addition, OA&MM is monitoring compliance with contract performance evaluation requirements

as part of its Acquisition Performance Review Program. Deficiencies found during these reviews are being documented and discussed with contracting staff.

Office of Inspector General Comments. The implementation plan is acceptable. We will follow up on the planned actions until they are completed.

Issue 2 – Cooperation between VA Procurement Staff and OSDBU

The level of cooperation between OSDBU and VA procurement officials was generally satisfactory, although there were instances of miscommunication and confusion about the requirements for small business program reviews. Both OSDBU and heads of VA contracting activities (HCAs) have responsibilities for ensuring that maximum practicable procurement opportunities are provided to small and disadvantaged businesses.

OSDBU and OA&MM officials cited several areas in which the two organizations had worked cooperatively to promote VA's small business programs. Cooperative efforts included developing VA's small business utilization goals, providing CO training on small business programs, and conducting outreach activities to inform small businesses of VA procurement opportunities and procedures.

Although OSDBU officials acknowledged these cooperative efforts, they also expressed concern that some contracting activities did not always obtain OSDBU concurrence for proposed procurements and that some COs ignored OSDBU's suggestions for including small businesses in particular procurements. However, they could not tell us how frequently these problems had occurred. To illustrate their concerns they could cite only one example, a proposed information technology (IT) procurement that was still in process as of January 2003. They told us that they could not provide any other examples because they did not maintain data showing how many small business program reviews had been completed or the results of these reviews.

Small business program reviews are VA's control for ensuring that small and disadvantaged businesses are given consideration on proposed procurements. The reviews are conducted by OSDBU, Small Business Administration (SBA) procurement center representatives, or other designated representatives such as HCAs. For most procurements, COs should request small business program review and concurrence before solicitations are issued.

If the reviewer does not concur with the small business component of the proposed procurement, the CO must consult with the reviewer to explore small business options. If agreement cannot be reached, the questioned procurement may be referred to SBA for further review. SBA may allow the procurement to proceed as proposed or may appeal it to the Secretary of Veterans Affairs. OSDBU officials estimated that in recent years procurements had been referred to SBA only about once every 18 months. SBA had not appealed any procurements to the Secretary.

Small Business Program Review Requirements Not Always Followed. To evaluate the small business program review process, we reviewed eight major procurements—the proposed IT procurement that OSDBU officials cited as a problem, six NAC procurements, and the most

recent AOS interment flag procurement. We found no deficiencies in the review process for five of the eight procurements. These five procurements were approved as submitted and resulted in 514 contracts, of which 334 (65 percent) were awarded to small businesses.

Proposed IT Procurement. On this proposed procurement, the CO made mistakes and there was miscommunication between OSDDBU and OA&MM. In October 2001, OSDDBU nonconcurred with OA&MM's initial proposal because it did not include any small business set-asides. In January 2002, OSDDBU concurred with a revised proposal that included set-asides. However, OSDDBU made the concurrence conditional on several changes, such as increasing the small business subcontracting goals to the minimum levels of VA's Fiscal Year (FY) 2002 small and disadvantaged business goals.

In July 2002, OSDDBU noticed that the advertised request for proposal (RFP) did not include the changes requested in their conditional concurrence. OA&MM contracting staff acknowledged that the wrong version of the RFP had been issued and agreed to issue a corrected version. However, OA&MM again mistakenly omitted the requested revisions. Shortly thereafter, OA&MM cancelled the RFP because of unrelated problems with the technical specifications for the scope of work. According to OSDDBU and OA&MM officials, since July 2002 they have worked cooperatively on a new RFP that included the appropriate small business requirements. An amended RFP was issued in February 2003.

NAC and AOS Procurements. For two procurements, the COs did not request the required small business reviews. For one of the six NAC procurements, the CO mistakenly believed that it was not necessary to request a review because the products were non-generic drugs available only from large manufacturers.

For the interment flag procurement, the CO did not request a small business review because AOS operating procedures did not require a review when part of the procurement was to be set aside for small businesses. However, the AOS procedures were not in compliance with the governing VA regulations, which required an OSDDBU review. For this procurement, the CO allocated 60 percent of the procurement to small businesses and 40 percent to Javits-Wagner-O'Day (JWOD) Program nonprofit organizations that employ or train severely disabled workers. Under the VA regulations, the non-JWOD portion of the procurement should have been reviewed by OSDDBU. (JWOD set-asides do not require small business reviews.) Although the required review was not done, the CO did award contracts for the entire non-JWOD procurement to small businesses.

For these two procurements, the absence of reviews did not materially affect the extent of small business participation. However, the reviews should still be requested for these types of procurements so that OSDDBU or SBA representatives can review the proposed procurements to ensure that full consideration has been given to small and disadvantaged business program goals. For example, the non-generic drug procurement should have been reviewed to determine if using small businesses as subcontractors was a feasible alternative.

Data on Small Business Reviews Not Maintained by OSDDBU or OA&MM. OSDDBU and OA&MM did not maintain databases showing which procurements required small business program reviews or the results of completed reviews. Because of this absence of data, we could

not determine within the scope of this evaluation if the problems that occurred in the IT procurement were widespread, nor could we determine how many small business program reviews had not been done.

To improve oversight, OSDBU and OA&MM should develop management information that will allow them to monitor and evaluate the effectiveness of small business reviews. Information could be captured on procurements subject to the review requirements and on review outcomes, such as concurrences, nonconcurrences, interventions with contracting officials, set-asides accomplished, and SBA appeals. This type of data would facilitate the measurement and evaluation of actual accomplishments in increasing the number of new contracts awarded to small businesses.

Cooperation Required to Achieve Procurement Reform and Small Business Goals. In recent years, VA top management has encouraged a proper balance between the two important concerns of reforming VA procurement programs to obtain better prices and increasing procurements from small and disadvantaged businesses. In June 2002, the Secretary directed implementation of the recommendations of the VA Procurement Reform Task Force. The Task Force recommended more effective leveraging of VA's substantial market share to obtain better prices. This would be accomplished by expanding the use of national-scope contracts, standardizing products, and consolidating purchases. The Task Force recognized that these reforms could limit opportunities for small businesses. In his November 2002 memorandum announcing VA's small and disadvantaged business goals for FY 2003, the Secretary stressed the importance of ensuring that small businesses are included in VA's procurement strategies even though this may become more difficult as procurement operations are streamlined.

In addition, in October 2002, the Office of Management and Budget (OMB) issued new guidelines aimed at making more Federal procurements available to small businesses. In recent years, the number of new Federal contracts awarded to small businesses has decreased as a result of increased contract "bundling." Bundling is defined as consolidating two or more smaller procurements into a single large contract that might not be suitable for award to small businesses.

The new OMB guidelines appear to expand OSDBU's oversight responsibilities for VA procurements. VA and other Federal agency OSDBUs will be required to conduct contract bundling reviews for proposed procurements, identify alternative strategies for proposed bundled contracts, and require written justification when the alternatives are not used. In addition, agencies will have to improve contractor compliance with subcontracting plans and facilitate the development of small business teams and joint ventures. Agencies will also have to periodically report to OMB on their efforts to limit contracting bundling.

As part of VA's ongoing efforts to balance the goals of reforming procurement practices and expanding small business contracting, OSDBU and OA&MM should clarify or reemphasize small and disadvantaged business utilization program responsibilities and procedures. In September 2002, OA&MM issued an Information Letter to all VA contracting activities emphasizing the need to comply with requirements for small business reviews and to seek out new contracting opportunities for small businesses. However, our review of procurement documents and discussions with OA&MM and OSDBU officials and COs showed that there was

confusion about the requirements for small business reviews and about how the requirements should be applied for contracts of different types and dollar values. OA&MM policy officials acknowledged that VA's published requirements were outdated and needed clarification. These requirements should be updated and distributed to all contracting activities.

Recommendation 2

We recommended that the Acting Deputy Assistant Secretary for Acquisition and Materiel Management and the Director, OSDDBU work together to develop and use management information needed for monitoring and evaluating the results of small business program reviews and clarify and update small and disadvantaged business program responsibilities and procedures.

Acting Deputy Assistant Secretary for Acquisition and Materiel Management and Director, OSDDBU Comments. The Acting Deputy Assistant Secretary and the Director, OSDDBU concurred with the findings and recommendation.

Implementation Plan. The Deputy Assistant Secretary and the Director, OSDDBU had met to develop VA's strategy for responding to the OMB initiative for increasing small business participation in Federal procurements. They determined that VA needed to improve internal acquisition planning and strengthen acquisition review processes. As part of this effort, small business program reviews will be enhanced, better management information will be developed, and clear and timely information will be distributed throughout the VA acquisition community. As of March 2003, OSDDBU and OA&MM were developing implementation plans for these efforts, although specific completion dates had not yet been established.

Office of Inspector General Comments. The implementation plan is acceptable. We will follow up on the planned actions until they are completed.

Acting Deputy Assistant Secretary for Acquisition and Materiel Management Comments

Department of Veterans Affairs

Memorandum

Date: Mar 18 2003
From: Acting Deputy Assistant Secretary for Acquisition and Materiel Management (049A5A)
Subj: Draft Report: Evaluation of Selected VA Procurement and Small Business Issues (Project No. 2002-1481-R8-0090)
To: Assistant Inspector General for Auditing (52SE)

1. Thank you for the opportunity to review and comment on the draft subject report. We concur with the recommendations.

2. Regarding Recommendation 1, the Office of Acquisition and Materiel Management, through its Acquisition Performance Review Program, monitors past performance evaluations made during pre-award and examines compliance in performing past performance evaluations for interim and final contracts in accordance with FAR 36.604 and 42.1502. Deficiencies found in these areas are documented and discussed with contracting staff. In addition, the Acquisition Policy Division is in the process of developing an information letter (IL) to provide guidance to VA contracting activities regarding the requirements for evaluating contractor's past performance as part of the contract award process, as a performance evaluation factor, and for completing end-of-contract evaluations. The IL will provide guidance for using two evaluation tools, the National Institutes of Health (NIH) Contractor's Performance System (CPS) and the Past Performance Information Retrieval System (PPIRS). NIH's CPS is used as an evaluation tool for future source selection purposes. It captures, maintains, and disseminates contractor performance evaluations on quality of product/service, cost control, timeliness, business practices, and customer satisfaction. PPIRS is a central system that incorporates all government past performance information currently captured on existing tools. It provides data that can be used in making source selection decisions. The expected completion date for issuing this IL is April 30, 2003.

3. Regarding Recommendation 2, we concur with the Office of Small and Disadvantaged Business Utilization's (OSDBU) comments. We are working with OSDBU to develop an implementation plan to enhance acquisition planning and small business program reviews.

4. If you have any questions, feel free to contact Mr. Ford Heard, Director, Acquisition Resources Service, at (202) 273-8815.

Original signed by
David S. Derr

Director, Office of Small and Disadvantaged Business Utilization Comments

**Department of
Veterans Affairs**

Memorandum

Date: Mar 3 – 2003

From: Director, Office of Small and Disadvantaged Business Utilization

Subj: Draft Report: Evaluation of Selected VA Procurement and Small Business Issues
(Project No. 2002-1481-R8-0090)

To: Assistant Inspector General for Auditing (52SE)

1. Thank you for the opportunity to review the draft subject report. I found the report to be thorough and well written.
2. You asked for my comments on Recommendation 2. This recommendation states: that the Deputy Assistant Secretary for Acquisition and Materiel Management and the Director, OSDBU work together to (a) develop and use management information needed for monitoring and evaluating the results of small business program reviews and (b) clarify and update small and disadvantaged business program responsibilities and procedures. I concur with your recommendation.
3. As mentioned in the report, in October 2002, the Office of Federal Procurement Policy issued a report entitled "Contract Bundling: A Strategy for Increasing Federal Contracting Opportunities for Small Business." I have met with the Deputy Assistant Secretary for Acquisition and Materiel Management to develop VA's strategy for responding to the nine points of the OFPP report.
4. We have determined that VA needs to improve its internal acquisition planning and to strengthen its process of acquisition review. As part of this effort, small business program reviews will be enhanced, better management information will be developed and clear and timely information will be distributed throughout the VA acquisition community. Our respective staffs are currently developing the implementation plan for these efforts. I cannot at this time, give you specific completion dates.
5. We are required to report quarterly to OFPP on our progress and would be pleased to provide you with copies of the reports as they are developed if you like. I have enclosed a copy of the first report.
6. If you have any questions, please feel free to contact me at 202-565-8124.

Original signed by
Scott F. Denniston

Enclosure

OIG Note: The enclosure referred to in paragraph 5 of the memorandum was not included in this Appendix because it had not yet been released by the Office of the Secretary.

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This report will be available in the near future on the VA Office of Audit Web site at <http://www.va.gov/oig/52/reports/mainlist.htm>, *List of Available Reports*. This report will remain on the OIG Web site for 2 fiscal years after it is issued.