



June 19, 2006

MEMORANDUM FOR THE DEPUTY SECRETARY

Handwritten signature of Elliot P. Lewis in blue ink.

FROM: ELLIOT P. LEWIS
Assistant Inspector General
for Audit

SUBJECT: **ALERT REPORT:** ETA's Contract with The Creative Eye
d/b/a TCE Digital Solutions is in Violation of SBA
Section 8 (a) Program Requirements
Report Number: 05-06-005-03-390

This memorandum transmits the initial results of our performance audit of the Employment and Training Administration, Division of Contract Services' (ETA's) procurement action with The Creative Eye d/b/a TCE Digital Solutions (TCE) of Camp Springs, Maryland, and recommends immediate corrective actions. We are addressing this memorandum to you because, although the contract was awarded by ETA, it also involves Job Corps.

We found three violations of either SBA regulations or the contract provisions:
(1) The current value of the TCE contract exceeds the \$3 million limit for the life of the contract allowed in the U.S. Small Business Administration (SBA) regulations;
(2) contrary to the regulations, TCE has not "performed 50 percent of the cost of the contract incurred for personnel with its own employees;" and (3) although the solicitation package that ETA submitted, and SBA approved, was limited to tasks only in the Job Corps program, the Statement of Work in the executed contract with TCE provided for general tasks, which allowed ETA to issue task orders for programs and functions throughout ETA.

We strongly recommend that you take immediate action to ensure all pending contract modifications to TCE are stopped and that no additional funds or task orders are added to Contract No. J051A20206. In addition, since the lifetime contract "not to exceed" maximum has been exceeded, we recommend the 1-year option not be exercised.

Background:

On June 3, 2005, ETA contacted SBA concerning its requirement for a potential acquisition under Section 8(a) of the SBA Act. According to ETA's request, it contemplated an indefinite-quantity type contract, not to exceed \$3 million. The period

of performance was 12 months from the date of contract execution, plus two 1-year options at the discretion of the Government. ETA requested authority to negotiate with TCE in accordance with streamlined 8(a) contracting procedures outlined in the partnership agreement between SBA and DOL. The Statement of Work attached to ETA's request outlines "tasks for a twelve-month contract to assist Job Corps in supporting students with disabilities in three areas. . . ."

In response to ETA's request, on June 20, 2005, SBA accepted the requirement to "assist Job Corps in supporting students with disabilities in three areas," with TCE. The value of the procurement was not to exceed \$3 million, inclusive of all options. SBA determined that TCE had the requisite capabilities to satisfactorily perform the work. SBA authorized ETA to negotiate and contract directly with TCE, as specified in the partnership agreement. In addition, ETA was required to send an executed copy of the contract award package to SBA within 10 days of final signature.

Results:

As a result of our review of the ETA official contract file of the TCE procurement action and interviews with SBA officials and ETA contracting officials, we have determined the following:

- The base year value of the TCE contract, through Modification No. 8, dated May 4, 2006, is \$3,702,284. This is in excess of the SBA approval, and in violation of SBA regulations at 13 CFR 124.506(a), which limit all non-manufacturing contracts to \$3 million, including all options.
- Through February 28, 2006, TCE had performed 25 percent of the work with its own staff. 13 CFR 125.6 requires that the contractor "perform at least 50 percent of the cost of the contract incurred for personnel with its own employees."
- The solicitation package that ETA submitted, and SBA approved, was limited to tasks in the Job Corps program. However, the contract Statement of Work with TCE provides for general tasks, which allows ETA to issue task orders for programs throughout ETA, including Job Corps (which was part of ETA at the time), Foreign Labor Certification, Workforce Investment, and Performance and Technology.
- There is no evidence in ETA or SBA files that ETA forwarded copies of the contract or modifications to SBA. The partnership agreement provides that failure to do so could result in SBA's suspension or rescission of the partnership agreement for all of DOL.

Recommendation:

We strongly recommend that you take immediate action to ensure all pending contract modifications to TCE are stopped and that no additional funds or task orders are added to Contract No. J051A20206. In addition, since the lifetime contract "not to exceed" maximum has been exceeded, we recommend the 1-year option not be exercised.

Conclusion:

The results reported herein are based on our work to date. Field work is continuing and we will report further in a separate report when our work is completed.

Due to the seriousness of the issues identified, we request that you take immediate action and respond to this report within 5 working days on actions taken.

If you have any questions regarding the report's information, please contact me at 693-5170.

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