
Review of Selection and Award Process of Metaformers
Contracts

Final Report



Information Technology No. 13-001
September 12, 2012

**Washington Metropolitan Area Transit Authority
Office of Inspector General**

M E M O R A N D U M

FINAL AUDIT REPORT WITH RECOMMENDATIONS

Information Technology No. 13-001



SUBJECT: Review of Selection and Award
Process of Metaformers Contracts

DATE: September 12, 2012

FROM: OIG – Helen Lew /S/

TO: GM/CEO - Richard Sarles
COUN - Carol O’Keeffe

This **Final Audit Report**, entitled *Review of Selection and Award Process of Metaformers Contracts*, presents the results of our audit. The objective of the audit was to determine whether the Washington Metropolitan Area Transit Authority (WMATA) followed applicable policies and procedures, guidance, regulations and laws during the selection and award process of two contracts to Metaformers.

Background

In December 2000, WMATA developed a plan to replace its information technology (IT) systems with an enterprise-wide solution. This program was called the IT Renewal Program (ITRP), and its focus was to replace the aging legacy business systems with commercial-off-the-shelf (COTS) software. The intent was to eliminate multiple data entry, redundant data, 191 separate applications, and 119 servers.

In 2002, WMATA embarked on a plan to design and implement a full Enterprise Resource Planning solution utilizing a system integrator approach which was teamed with functional experts from all business areas of WMATA. Based on recommendations by Booz Allen Hamilton, the ITRP team selected Oracle’s PeopleSoft as the COTS software of choice for the financial and human resource

system. PeopleSoft would be WMATA's enterprise financial management system. By implementing PeopleSoft, WMATA expected to have a fully integrated, cost-effective business system that provides timely, accurate, and fully reported information in a centralized and useable format eliminating unnecessary manual touch points, and incorporating generally accepted best-practices. This goal was not fully realized after WMATA invested approximately \$48 million in the PeopleSoft implementation.

In June 2007, WMATA started a PeopleSoft remediation process to correct deficiencies in the system's installation. The remediation process was supposed to encompass: (1) Human Resources and Payroll (HRPR), (2) Budget, (3) Finance, (4) Procurement, and (5) Fixed Assets. However, WMATA only completed the remediation of HRPR. The HRPR remediation started in June 2007 and was completed in March 2009. The cost of the HRPR remediation process was approximately \$6.9 million.

The Office of Inspector General (OIG) issued a report titled, *Review of the PeopleSoft Remediation Project*, IT-10-001, dated October 21, 2009. We found WMATA did not follow a sound system remediation methodology on the HRPR project and did not meet program expectations by completing the project within the estimated cost and time budgets.

Metaformers Contracts

In August 2009, WMATA awarded contract ES-9204 to Metaformers to assess and document WMATA's financial management system (PeopleSoft), which includes the general ledger, accounts receivable, accounts payable, budget, treasury, procurement, human resources, payroll, and project costing core applications; the system also integrates with the Enterprise Performance Management (EPM) system. The assessment also included other WMATA software applications, such as Maximo and Trapeze, which are expected to

interface with the core financial systems. The assessment, which was conducted between October 2009 and February 2010, revealed a critical need to re-architect WMATA's financial operations and its use of the PeopleSoft system. The assessment cost \$256,800 and was funded through the *American Reinvestment and Recovery Act of 2009* (ARRA).

On July 12, 2010, WMATA awarded a firm fixed-price, 24-month contract (ES-10158)¹ to Metaformers for PeopleSoft implementation services.² The base period contract was for \$9,147,466. The contract contained four Tasks. Task One and Two were initially exercised. WMATA reserved the right to award Task Three and Four at a later date, but within the base period of the contract. WMATA subsequently exercised Task Three and Four, bringing the cost of the contract to approximately \$14 million.³ Of this amount, \$4,743,200 was from ARRA funds, at least \$4,256,800 from other federal funds, and the remaining amount from other sources. The contractor was responsible for providing: (1) personnel, materials and insight required to redesign, upgrade and integrate WMATA's financial systems in accordance with the statement of work (SOW), industry standards, and commercial best practices; (2) a comprehensive solution that delineates its approach, methodology, risk mitigation, deliverables, and its solution efficiencies and effectiveness; and (3) a solution that consists of phases or modules and completion dates prior to moving to the next phase or module.

Metaformers was also tasked to address the assessment findings it identified under contract ES-9204. The project is formally referred to as the Financial System Integration Project but is known as the Integrated Financial Organization (IFO) project.

¹ WMATA was seeking a contractor to integrate WMATA's existing financial systems and functional business processes to accomplish Metro's strategic objective of establishing a single, enterprise-wide information standard.

² The PeopleSoft Implementation Services [project] consisted of Phase II; Task One (Financials Upgrade) and Task Two (Data Preparation); and Task Three and Task Four (both tasks for Financial Support).

³ The cost of the contract to date was provided by WMATA's Project Coordinator, IFO - Finance Project.

Audit Results

We found WMATA generally followed policies and procedures, guidance, regulations and laws in selecting and awarding contract ES-9204 to Metaformers to assess its PeopleSoft financial management system. However, we found WMATA did not follow applicable policies and procedures, guidance, regulations and laws in the selection and award of contract ES-10158 to Metaformers to implement the IFO project. Specifically, we found the Office of Procurement and Materials (PRMT) did not solicit offers from at least three sources as required by federal regulations. The Office of General Counsel (COUN) approved the contract when PRMT had not followed the federal regulations for soliciting three offers.

Additionally, we found WMATA created the appearance of an organizational conflict of interest by allowing Metaformers to have access to nonpublic information, as well as create the "Roadmap," establishing the ground rules for the second contract (which was also awarded to Metaformers) to implement the IFO project.

We recommend that the General Manager/Chief Executive Officer (GM/CEO) direct the Deputy General Manager, Administration/Chief Financial Officer (DGMA/CFO) to update the Procurement Procedures Manual and ensure compliance with procurement policies and procedures outlined in Federal Transit Administration (FTA) Circular 4220.1F (Recommendation 2.1). In addition, we recommend that the GM/CEO direct the DGMA/CFO to notify the FTA that WMATA did not follow FTA Circular 4220.1F in selecting and awarding contract ES-10158 to Metaformers (Recommendation 2.2). We also recommend that General Counsel assess its process for performing legal reviews on procurements and take appropriate action (Recommendation 2.3). Finally, we recommend that the GM/CEO direct the DGMA/CFO to develop and implement

controls to ensure organizational conflicts of interest are avoided on all future procurements (Recommendation 3.1).

We provided a revised draft of this report to the GM/CEO and General Counsel for review and comment on August 16, 2012. Management concurred with Recommendation 2.1. In response to Recommendation 2.2 of the draft of this report, Management stated they believe that it complied with full and open competition in the Common Grant Rule, but Management will follow the guidance in FTA Circular 4220 to seek three proposals when using GSA. Management will flag Contract ES-10158 for review in the next FTA Procurement review. Regarding Recommendation 2.3, COUN will coordinate with PRMT to achieve the maximum integration possible between the two processes to ensure full compliance with all federal requirements. COUN and PRMT will also provide training at the ELT and Director level on the various procurement vehicles and legal considerations. Management disagreed with Finding 3 and Recommendation 3.1. We summarized the comments at the end of each finding and included the comments in their entirety as an enclosure to this report (see Attachment 1 of this report).

We did not make any changes to the findings and recommendations based on Management's comments.

FINDING 1 – WMATA generally followed policies and procedures in selecting and awarding contract ES-9204 to Metaformers

Our audit found WMATA generally followed policies and procedures, guidance, regulations, and laws during the selection and award process of contract ES-9204 to Metaformers for an assessment of the PeopleSoft financial management system.

On May 6, 2009, WMATA issued a Request for Proposal (RFP) for a contractor to provide financial systems integration services (the assessment). The RFP was advertised on WMATA's website, and PRMT received six proposals. Best and final offers (BAFO) were received from three vendors on August 17, 2009. Two other vendors chose not to submit BAFOs. The sixth offeror's proposal was determined to be technically unacceptable and not correctable through the submission of a revised proposal and, therefore, was not considered. WMATA selected and awarded contract ES-9204 to Metaformers as the successful bidder to do the assessment of PeopleSoft.

FINDING 2 – WMATA did not follow applicable policies and procedures, guidance, regulations and laws in the selection and award of contract ES-10158 to Metaformers

We found WMATA awarded contract ES-10158 to Metaformers without following applicable policies and procedures, guidance, regulations, and laws. Specifically, we noted: (1) PRMT did not solicit offers from at least three sources for a procurement for IT professional services, as required by FTA Circular 4220.1F,⁴ and (2) COUN approved the contract when PRMT had not followed federal regulation for soliciting at least three sources. The details of this finding are discussed below.

A. PRMT did not solicit offers from at least three sources

We found PRMT did not properly solicit offers from at least three sources on the GSA Schedule⁵ during the selection and award process for PeopleSoft implementation services (contract ES-10158).

Section 73(a)(1) of the Compact regarding Contracting and Purchasing states, in part, WMATA in conducting a procurement of property, services, or construction

⁴ FTA Circular 4220.1F, Third Party Contracting Guidance, Chapter V , Sources, Section 6, Federal Supply Schedules, Subsection d. Competition and Price Reasonableness.

⁵ WMATA is given specific authority to use the GSA Schedules program.

shall: (A) obtain full and open competition through the use of competitive procedures in accordance with the requirement of this section; and (B) use the competitive procedures or combination of competitive procedures that is best suited under the circumstances of the procurement.

FTA Best Practices Procurement Manual⁶ (BPPM) under the topic of "Full and Open Competition Principle" states in part: The principle of full and open competition has one primary and two secondary purposes. The primary purpose is to obtain the best quality and service at minimum cost. In other words, to get the best buy. The secondary purposes are to guard against favoritism and profiteering at public expense, and to provide equal opportunities to participate in public business to every potential offeror.

FTA Circular 4220.1F, (the Circular) page V-4(d) Competition and Price Reasonableness, dated November 1, 2008, Revised April 14, 2009, states when using GSA Schedules to acquire property or services, a recipient will have fulfilled the Common Grant Rules⁷ competition requirements if it seeks offers from at least three sources. Additionally, Chapter II, Applicability, Legal Effect of the Circular states "if a recipient identifies an alternative method for complying with an applicable Federal statute and regulation, it may contact FTA before employing that method to ensure FTA agrees with the alternative proposed. While FTA's prior concurrence is not required, FTA reserves the right to decline

⁶ This Manual provides recipients of Federal Transit Administration (FTA) funds suggestions on conducting third party procurements to assist them in meeting the standards of FTA Circular 4220.1E (the Circular). The Manual consists of suggested procedures, methods, and examples which FTA encourages. These are based on the Federal acquisition process, Comptroller General decisions, and "Best Practices" of grantees and others in the industry. (Note: the Circular was replaced with FTA Circular 4220.1F in November 2008.)

⁷ Common Grant Rules, for purposes of the Circular, means: (1) DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 CFR Part 18, which apply to Federal grants and cooperative agreements with governmental recipients of Federal assistance including Indian tribal governments, and (2) DOT regulations, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," 49 CFR Part 19, which apply to Federal grants and cooperative agreements with non-governmental recipients of Federal assistance.

to participate in the costs of third party procurements that fail to comply with Federal laws, regulations, or terms of the recipient's underlying grant or cooperative agreement."

In the FTA Master Agreement MA(16), 10-1-2009, § 2c(1), Federal Laws, Regulations and Directives, FTA strongly encourages adherence to applicable Federal directives and the Recipient "understands and agrees that unless the recipient requests FTA approval in writing, the Recipient may incur a violation of federal laws or regulations, its Grant Agreement, or Cooperative Agreement, or this Master Agreement if it implements an alternative procedure or course of action not approved by FTA." Under Section 1(e) of FTA,s Master Agreement, a federal directive includes circulars and guidance.

Additionally, according to ARRA, Subtitle D—Additional Accountability and Transparency Requirements, Section 1554, Special Contracting Provisions, "To the maximum extent possible, contracts funded under this Act shall be awarded as fixed-price contracts through the use of competitive procedures. A summary of any contract awarded with such funds that is not fixed-price and not awarded using competitive procedures shall be posted in a special section of the website established in section 1526."

WMATA did not follow the above requirements. We found PRMT only reviewed (surveyed) the GSA Schedule price list for IT service vendors. WMATA's Procurement Procedures Manual (PPM), (Tenth Addition [sic], 2004), § 416.5., in part states "Orders that exceed the federal micro-purchase threshold but do not exceed the maximum order threshold of the Schedule shall be placed with the schedule contractor that can provide the supply or service that represents best value.⁸ Before placing the order, the contracting officer shall review the catalogs

⁸ FTA Circular 4220.1F defines "Best Value" as a competitive, negotiated procurement process in which the recipient reserves the right to select the most advantageous offer by evaluating and comparing factors in

or price lists of at least three Schedule contractors and select the delivery and other options available under the Schedule that best meets the Authority's needs."

Accordingly, the Contracting Officer (CO) developed an Independent Cost Estimate⁹ (\$13,035,600) for the project using the survey approach, the CO then, in addition to Metaformers, selected a GSA Schedule contractor similar in size to Metaformers (Company A) and a Schedule contractor larger than Metaformers (Company B). According to the Procurement Record for Contract ES-10158, PRMT using the GSA price list calculated a price of \$13,126,340 for Company A and \$19,612,866 for Company B.

In contrast to the requirements in FTA Circular 4220.1F, PRMT did not use the GSA Schedule to seek offers from at least three sources to perform the services identified in the SOW. PRMT only provided a RFP and SOW to Metaformers.

Metaformers submitted Cost Proposal #1 totaling \$15,989,789 on April 30, 2010. This proposal was almost 23 percent above the independent cost estimate. Company A and Company B were 1 percent and 50 percent, respectively above the independent cost estimate.

PRMT did not use Metaformers' initial proposed price. Through a series of discussions, Metaformers submitted several revised cost proposals until it arrived at the \$13.5 million figure; see Table 1 for list of revised cost proposals.

addition to cost or price such that a recipient may acquire technical superiority even if it must pay a premium price.

⁹ This independent cost estimate is based on actual expenses used in the PeopleSoft Remediation contract (OPTIMOS) in February 2008 to April 2009.

Table 1 – Metaformers’ Cost Proposals

	PRMT Independent Cost Estimate*	Metaformers Proposals Amounts	Percent (%) Above Estimate
Metaformers’ Cost Proposal #1	\$13,035,600.00	\$15,989,789.00	22.66
Metaformers’ BAFO	\$13,035,600.00	\$15,991,503.00	22.68
Metaformers’ Revised #1	\$13,035,600.00	\$14,794,000.00	13.49
Metaformers’ Revised #2	\$13,035,600.00	\$13,534,991.00	3.83
Metaformers’ Final Proposal	\$13,035,600.00	\$12,932,015.00	-0.79

*Actual Expenses booked to Remediation Contract (Feb. 2008 to Apr. 2009 estimated)

Based on the best value determination prepared by PRMT, the Department of Information Technology (IT), and the Deputy General Manager Administration/Chief Financial Officer (DGMA/CFO), Metaformers was selected as the successful bidder for the IFO project under contract ES-10158.

During our review of the contract (ES-10158) files, we identified several documents indicating the contract would be awarded competitively. For example, the Metro Electronic Action Document (MEAD) presented to the WMATA Board of Directors, and approved on June 2, 2010, indicated the IFO project would be either GSA or competitively awarded. The *Metro Economic Stimulus Procurement* cover sheet was developed by the former Chief Administrator Officer (CAO), completed by PRMT, and signed-off by COUN. The cover sheet indicated contract ES-10158 was a competitively awarded GSA contract. We also noted that PRMT provided a listing of ARRA funded projects to members of the Executive Leadership Team (ELT) and other management personnel indicating the IFO contract would be competitively awarded.

We found no evidence to support that the contract was properly competed by soliciting offers from at least three sources. Our review did not reveal any evidence WMATA issued or solicited a RFP from a company other than Metaformers. In fact, the CO signed a document (modification 7 for Task 4, Financial Support Services) on January 12, 2012, indicating the contract was a negotiated sole source contract.

On March 14, 2012, we asked the Chief Procurement Officer (CPO) about the type of contracting vehicle used on the IFO procurement. The CPO responded that the description in the procurement file indicating the IFO contract was a "negotiated sole source contract" is incorrect. The CPO had indicated that contract ES-10158 was a competitive GSA contract. However, when we told her the Procurement Manual was not up to date and did not reflect FTA Circular 4220.1F, she indicated the Manual is in the process of being updated. The CPO eventually agreed WMATA was not in compliance with FTA Circular 4220.1F, a regulation requiring it to seek offers from at least three sources. PRMT also did not ensure the use of these ARRA funds were publicized. Accordingly, WMATA may not have selected the contractor offering the "best value."

B. COUN approved the contract when PRMT had not followed federal regulations for soliciting three offers

Our review showed COUN had approved the Procurement Record of Contract ES-10158 in June 2010, without knowing there was a federal regulation requiring at least three competitive bid solicitations. As we discussed earlier, WMATA did not correctly use the GSA Schedule to seek offers from at least three sources to compete for contract ES-10158.

According to WMATA's PPM, Chapter 4, Procurement Planning and Methods, Section 401, General Counsel is consulted during the procurement initiation process. Additionally, WMATA's (intranet) website states in part that, "The Office of General Counsel is responsible for planning, directing, and providing substantially all of the legal services provided to the Authority. The Office of General Counsel renders legal advice on procurement/contractual matters."

We interviewed the attorney in COUN who signed-off on the contract on two separate occasions (January 9 and March 19, 2012) about his role in determining legal sufficiency for selecting and awarding contract ES-10158 to Metaformers. At the March meeting, he informed the Assistant Inspector General for Audits and the Auditor-in-Charge that he used the Compact, FTA guidance and other federal regulations to determine legal sufficiency of contracts. He told them he was not familiar with all aspects of FTA Circular 4220.1F when this document was presented to him. He generally agreed that contract ES-10158 did not comply with the FTA Circular regarding the required number of offers which should be solicited when using the GSA Schedule and exceeding maximum order threshold. When asked what legal sufficiency entails, he noted ensuring all policies, procedures, and regulations are followed for the applicable procurement.

The attorney's failure to advise PRMT of FTA Circular 4220.1F may have contributed to PRMT's selection and award of contract ES-10158 to Metaformers without competition from other offerors.

Recommendation:

We recommend the GM/CEO:

2.1 Direct the DGMA/CFO to update the Procurement Procedures Manual and ensure compliance with procurement policies and procedures outlined in FTA Circular 4220.1F.

2.2 Direct the DGMA/CFO to notify the FTA that WMATA did not correctly follow FTA Circular 4220.1F in selecting and awarding contract ES-10158 to Metaformers.

We also recommend that the General Counsel:

2.3 Assess its current process for performing legal reviews on procurements and take appropriate action.

Management Comments

For Recommendation 2.1, Management concurred. The Chief Procurement Officer has updated the Procurement Procedures Manual to ensure compliance with procurement policies and procedures outlined in the Compact and FTA Circular 4220 and 5010, both of which include the use of the GSA schedules as a means of competitive solicitation.

For Recommendation 2.2, Management believes that it complied with the full and open competition requirement in the Common Grant Rule. However, Management will follow the guidance in 4220 to seek three proposals when using the GSA schedules. Additionally, Management will flag Contract ES-10158 for review in the next FTA Procurement review.

For Recommendation 2.3, Management indicated that COUN's process for performing legal review on procurements is rigorous, but the review occurs, generally, at the end of the procurement process; many of the issues addressed in OIG 13-001 occurred in the planning phases of the project. COUN will coordinate with PRMT to achieve the maximum integration possible between the two processes to ensure full compliance with all federal requirements. To strengthen the procurement process, the Office of Procurement and the Office of General Counsel will provide training in September and October at the ELT and Office Director level on the various procurement vehicles available and the legal considerations, which attend each. The General Counsel will consult directly with FTA Chief Counsel when current federal guidance appears to be at odds with prior federal positions concerning WMATA's use of GSA schedules or any other matter.

OIG Response

For recommendations 2.1 and 2.3, the corrective actions taken or planned by Management should address our recommendations if properly implemented.

Regarding recommendation 2.2, we disagree with Management's response that they complied with the full and open competition requirement in the Common Grant Rule. However, the corrective actions taken or planned by Management should address our recommendations if properly implemented.

FINDING 3 - WMATA created the appearance of an organizational conflict of interest with Metaformers

We found that WMATA created the appearance of an organizational conflict of interest when it awarded contract ES-10158 to Metaformers. This conflict stems from Metaformers having been awarded contract ES-9204, and therefore, access to nonpublic information to develop the requirements, including a roadmap for contract ES-10158.

According to WMATA's PPM, Section 418, Tenth Addition [sic], 2004, "an organizational conflict of interest exists when the nature of the work to be performed under a proposed contract or subcontract may, without some restrictions on future activities, result in an unfair competitive advantage to the contractor or subcontractor or impair its objectivity in performing the contracted work. Most typically this would arise when a contractor prepares a design or specification for work that is to be procured competitively."

FTA Circular 4220.1F, chapter VI, section 4(h), dated November 1, 2008, and revised April 14, 2009, states an organizational conflict of interest occurs when any of the following circumstances arise:

- a) Lack of Impartiality or Impaired Objectivity. When the contractor is unable, or potentially unable, to provide impartial and objective assistance or advice to the recipient due to other activities, relationships, contracts, or circumstances.
- b) Unequal Access to Information. The contractor has an unfair competitive advantage through obtaining access to nonpublic information during the performance of an earlier contract.
- c) Biased Ground Rules. During the conduct of an earlier procurement, the contractor has established the ground rules for a future procurement by developing specifications, evaluation factors, or similar documents.

WMATA awarded contract ES-9204 in August 2009 to Metaformers with a SOW indicating the purpose was to "conduct a complete assessment of WMATA's current installed version of PeopleSoft Financials and other software applications

of the Authority, such as Maximo and Trapeze, identify business process best practice recommendations that would promote the Authority's business objectives, and define a set of requirements for the Financial organization's technology needs. The end goal is to develop a clear set of plans which will be actionable by IT, Finance and Procurement."

The SOW in Contract ES-9204 states, the contractor was to provide professional services to encompass an assessment of the finance department's technology needs and recommend finance operations best practices and deliver an implementation roadmap.

According to the SOW, the vendor was to, in addition to other tasks:

- Assess the existing modules of PeopleSoft financials and the other software applications of the Authority, as well as
 - Validate the list of used and unused modules.
 - Document and assess the PeopleSoft financial configuration as currently implemented.
 - Map all existing as-is business processes according to an agreed standard, including manual touch points. Some process maps will be provided by the WMATA Chief of Business Process Re-engineering (BPR), who will work with the vendor to develop the documentation standard.
 - Document and validate all systems integrations points and customizations.
 - Assess data quality issues and document anomalies.

The SOW for contract ES-9204 also tasked the vendor to provide Requirements Analysis Services, including the following:

- Complete requirements gathering by functional area through focused, facilitated work sessions.
- Recommend revised business practices to improve the overall efficiency of the financial function at WMATA. The recommendations must be based on knowledge of best practices in the industry but take into account the particular issues and needs of WMATA. The recommendations must include proposed logical applications architecture to depict a target integration of the PeopleSoft financial system(s) with other software applications of WMATA, such as Maximo and Trapeze. They must also include a process redesign roadmap that aligns policy, business process, and-technology changes, and recommends priority, sequence of tasks and timeline for the project components.
- Evaluate WMATA's technical infrastructure for optimal support of the proposed integrated architecture.

Metaformers developed a PeopleSoft Technical Assessment and Recommendation document (Metro Technical Infrastructure Analysis) for contract ES-9204. This document was prepared based on the contractor's review of WMATA's hardware, software and operations, disaster recovery, development and customization, change management and testing methodology, financials and supply chain management and enterprise performance management integration and security and workflow. The contractor also made recommendations to upgrade the path. In addition, the contractor created a PeopleSoft Upgrade Roadmap for the Financial Systems Integration Assessment. Metaformers used the PeopleSoft Roadmap in its follow-on contract (ES-10158).

In the RFP for contract ES-10158, WMATA outlined the current state of its financial process and stated the issues and concerns identified under contract ES-9204. According to the IFO Project Charter, the detail functional requirements for ES-10158 were largely identified during the Financial Systems Integration Assessment.

By allowing Metaformers to develop a roadmap and to gain access to nonpublic information used in a subsequent contract gives the appearance of an unfair competitive advantage over any other offeror for the IFO project.

Recommendation

We recommend the GM/CEO:

3.1 Direct the DGMA/CFO to develop and implement controls to ensure organizational conflicts of interest are avoided on all future procurements.

Management Comments

With regard to the award of ES-10158, Management disagrees that there was the potential for an organizational conflict of interest in this circumstance because had the Authority solicited proposals from three (3) vendors, the Authority would have provided the assessment document created under Contract ES-9204 to all potential offerors. This would have mitigated an appearance of an organizational conflict of interest arising from unfair competitive advantage.

OIG Response

We disagree with Management's assessment that the selection and award of contract ES-10158 to Metaformers did not create an appearance of an organizational conflict of interest. As we stated in the report, the conflict stems from Metaformers having been awarded contract ES-9204 and therefore, had

access to nonpublic information to develop the requirements, including a roadmap for contract ES-10158. The appearance of an organizational conflict was created when contract ES-10158 was then awarded to Metaformers.

Objective, Scope and Methodology

The objective of the audit was to determine whether WMATA followed applicable policies and procedures, guidance, regulations, and laws during the vendor selection and award process of two contracts to Metaformers. To accomplish our audit objective, we performed the following: (1) interviewed WMATA management, the CO, Contract Administrator (CA), Contract Officer Technical Representative (COTR), Technical Evaluation Team (TET) or panel personnel, the Associate General Counsel, and the Deputy General Counsel. We also reviewed WMATA's PPM, PRMT Policy Memorandums, Source Selection Manual, Policy Memorandum No. 10-04, Preparation & Inclusion of Conformed Contracts in Procurement Files. In addition, we reviewed Department of Transportation, Federal Transit Administration, Circulars 4220.1E & 1F, and FTA's BPPM. We also reviewed Title 49 CFR, Subtitle C, Section 18.36 Procurement (i.e. Common Grant Rules), the Compact, ARRA, FAR and GSA regulations and guidelines. We reviewed previously issued OIG reports concerning matters discussed in this report. Finally, we interviewed GSA procurement analysts to determine if our understanding of the GSA regulations was correct. In addition, we sought technical advice both orally and in writing from FTA Regional Counsel. The scope of our audit was contracts ES-9204 and ES-10158 during the period May 2009 through July 2010.

We held two exit conferences on March 26, 2012, and May 16, 2012, to discuss the findings and recommendations derived from the audit with management personnel. We conducted our audit in accordance with *Government Auditing Standards* appropriate to our scope. Those standards require that we plan and perform the audit to afford a reasonable basis for our judgments and conclusions

regarding the organization, program activity or function under audit. An audit includes assessment of applicable internal controls and compliance requirement of laws and regulations when necessary to satisfy our audit objectives. We believe that our audit provides a reasonable basis for our conclusions.

Administrative Matters

Corrective actions proposed (resolution phase) and implemented (closure phase) by the affected Departments/Offices will be monitored and tracked through the Office of Inspector General's Audit Accountability and Resolution Tracking System. OIG policy requires that you develop a final corrective action plan (CAP) for our review in the automated system within 30 days of the issuance of this report. The CAP should set forth the specific action items and targeted completion dates necessary to implement final corrective actions on the findings and recommendations contained in this report.

We appreciate the cooperation and assistance extended by your staff during the audit. Should you or your staff have any questions, please contact Andrew Clemmons, Assistant Inspector General for Audits on (202) 962-1014, or me on (202) 962-2515.

Attachment

cc: DGM/CFO - C. Kissal
CHOS – B. Richardson
PRMT – H. Obora

M E M O R A N D U M



SUBJECT: Response to OIG Draft Audit
Report: *IT 13-001 Review of
Selection and Award Process
of Metaformers Contracts*

DATE: August 30, 2012

FROM: GM/CEO – Richard Sarles
COUN – Carol O’Keeffe

TO: OIG – Helen Lew

The subject draft report, Information Technology No. 13-001, Review of Selection and Award Process of Metaformers Contracts was issued on August 16, 2012. Below is management's response.

Finding 2 – WMATA did not follow applicable policies and procedures, guidance, regulations and laws in the selection and award of contract ES-10158 to Metaformers

Auditor's Recommendations:

We recommend the General Manager/Chief Executive Officer (GM/CEO):

- 2.1 Direct the DGMA/CFO to update the Procurement Procedures Manual and ensure compliance with procurement policies and procedures outlined in FTA Circular 4220.1F.
- 2.2 Direct the DGMA/CFO to notify the FTA that WMATA did not correctly follow FTA Circular 4220.1F in selecting and awarding contract ES-10158 to Metaformers.

We also recommend that the General Counsel:

- 2.3 Assess its current process for performing legal reviews on procurements and take appropriate action.

Management Response:

Management places a high value on maintaining a competitive procurement environment as an effective way to ensure an efficient use of resources and to benefit from best practices and the best available expertise in the marketplace. As

such, we have taken and are taking a number of steps to continue to ensure robust procurement practices and policies.

- 2.1 Management concurs with the OIG recommendation. The Chief Procurement Officer has updated the Procurement Procedures Manual to ensure compliance with procurement policies and procedures outlined in the Compact and FTA Circular 4220 and 5010, both of which include the use of GSA schedules as a means of competitive solicitation.
- 2.2 Management believes that it complied with the full and open competition requirement in the Common Grant Rule. However, management will follow the guidance in 4220 to seek three proposals when using GSA and the Procurement Procedure Manual has been updated to require the solicitation of at least three (3) proposals when using the GSA schedules. Additionally, management will flag Contract ES-10158 for review in the next FTA Procurement review.
- 2.3 The COUN process for performing legal review on procurements is rigorous, but the review occurs, generally, at the end of the procurement process; many of the issues addressed in OIG 13-001 occurred in the planning phases of the project. COUN will coordinate with PRMT to achieve the maximum integration possible between the two processes to ensure full compliance with all federal requirements. To strengthen the procurement process, the Office of Procurement and the Office of General Counsel will provide training at the ELT and Office Director level on the various procurement vehicles available and the legal considerations, which attend each. This training will be provided in September and October. The General Counsel will consult directly with FTA Chief Counsel when current federal guidance appears to be at odds with prior federal positions concerning WMATA's use of GSA schedules or any other matter.

Finding 3 – WMATA created the appearance of an organizational conflict of interest with Metaformers

Auditor's Recommendations:

We recommend the GM/CEO:

- 3.1 Direct the DGMA/CFO to develop and implement controls to ensure organizational conflicts of interest are avoided on all future procurements.

Management Response:

- 3.1 To ensure a healthy and vibrant competitive environment, management understands the importance of avoiding and mitigating any actual or appearance of an organizational conflict of interest. To avoid such circumstances, management already has controls in place. Although the FAR does not directly apply to WMATA, (with one exception not relevant here), WMATA looks to the FAR for guidance and has noted that there is a proposed amendment to the FAR provisions on Business Ethics and Organizational Conflicts of Interest which was published for comment April 11, 2011. Management will monitor the progress of the proposed changes and consider using the final FAR amendment as a model for changes to the WMATA Procurement Manual, as appropriate, in order to give definitive guidance on these types of potential conflicts. WMATA will also continue to abide and follow FTA Circular 4220.1F, (the Circular) page V-4(d) Competition and Price Reasonableness dated November 1, 2008, February 15, 2011 and the Office of Procurement and Materials, Procurement Procedures Manual section 418 Organizational Conflicts Of Interest (New Rev. 10).

With regard to the award of ES-10158, Management disagrees that there was the potential for an organizational conflict of interest in this circumstance because had the Authority solicited proposals from three (3) vendors, the Authority would have provided the assessment document created under Contract ES-9204 to all potential offerors. This would have mitigated an appearance of an organizational conflict of interest arising from unfair competitive advantage

cc: DGMA/CFO - C. Kissal
CHOS – B. Richardson
PRMT – H. Obora