



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

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MEMORANDUM FOR PAMELA J. GARDINER  
DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Richard J. Morgante *Richard J. Morgante*  
Commissioner, Wage & Investment Division  
Carl T. Froehlich *Carl T. Froehlich*  
Chief, Agency-Wide Shared Services

SUBJECT: Revised Draft Audit Report - A Test of the Private Sector's Ability  
to Provide Tax Law Telephone Assistance Did Not Produce  
Sufficient Information to Support a Competitive Sourcing  
Decision (Audit No. 200330043)

We have reviewed the subject report and have a number of comments about its findings and recommendations. As the draft report reflects, the IRS identified the Toll-Free Tax Law Telephone Operations as a possible candidate for competitive sourcing and conducted a feasibility test to determine if a private vendor could deliver equal or superior quality in responding to tax law inquiries, compared to the level of quality achieved with IRS resources. An equally important objective of the test was to assess the public's reaction to receiving responses to tax law inquiries from a commercial vendor rather than the IRS.

The test was conducted to gather information to determine whether to pursue a Business Case Analysis (BCA). The BCA process is used as the basis to determine if a work activity is a viable candidate for competitive sourcing. In September 2004, the IRS decided not to pursue a BCA for toll-free tax law assistance at that time based on a number of factors. Most importantly, to do so at that time may have delayed efforts to merge the Customer Account Services functions of the Wage and Investment (W&I) Division and the Small Business/Self-Employment (SB/SE) Division into a single organization in W&I, as part of the IRS' ongoing reengineering/restructuring initiative. Additionally, significant concerns about the customer accuracy and survey results from taxpayers who were apprehensive about the use of private vendors to handle tax law questions led us to reach a conclusion not to pursue the BCA at that time.

We have no current plans to pursue a BCA for the Toll-Free Tax Law Operations; therefore, we do not agree to rescind the September 2004 decision. If we were to

pursue a BCA at some future date, we would consider all pertinent data, including test results and the audit report's recommendations, as part of the data-gathering process in developing a BCA. We also do not concur with your conclusion that the IRS did not derive benefit from the \$675,140 it paid to the vendor. The IRS did realize a number of measurable benefits from the test. Significantly, the IRS was able to evaluate the performance of a private vendor during the critical filing season period and assess the vendor's ability to accurately answer tax law questions and meet the performance standard specified in the contract. The vendor was responsible for handling approximately 10 percent of the tax law inquiries received during the 60 day period from February 16, 2004, through April 16, 2004. The benefits were realized in that the vendor answered 227,390 calls, of which 43 percent were tax law inquiries. The calls answered by the vendor represented an increase beyond the volume the IRS planned to answer using its own resources.

The results also showed that the vendor underperformed for the performance standard of customer accuracy, achieving a rate of only 44.6 percent during the rating period compared to the performance standard of 86.5 percent. The achieved accuracy rate clearly did not hit the mark in this performance standard. The test as outlined in the contract did not in any way restrict the vendor from assembling a staff knowledgeable in tax law to respond to the calls. The vendor's hiring strategy, training plan, and information technology solutions were not confined by the test structure.

In addition, we identified significant taxpayer concern about the use of private vendors to answer tax law inquiries. In particular, approximately 47 percent of taxpayers surveyed had concerns about privacy and confidentiality of taxpayer information.

The IRS also realized value from the feasibility test that can be used for future efforts. For example, we identified the need to clearly define and validate the vendor's use of a "statistically valid sampling methodology" in performance-based contracts.

We agree with the recommendation to expand the *IRS Guide to Competitive Sourcing* to include standards for valid research studies developed in consultation with IRS Research, Analysis, and Statistics. We also agree that all Evaluation and Source Selection team members and Source Selection Officials must follow the documented Source Selection procedures to ensure that conflicts of interest or appearances of conflicts of interest are avoided. However we do not believe a signed statement certifying that such officials "have no personal impairments that inhibit their ability to make a fair and impartial decision regarding the vendor proposals" is warranted. In the test, the Source Selection Authority team members and Source Selection Official complied with the provisions of the Federal Acquisition Regulation (FAR). Should the IRS determine to pursue a BCA in the future, this practice will continue.

We would like to provide clarifying information in response to your recommendation that any future solicitation related to the toll-free tax law operations should not contain any requirement that private vendors must use current IRS methodologies in meeting the requirements in the solicitation. The IRS uses performance-based contracts that define

desired outcomes, as opposed to mandating methods, to meet the requirements of the solicitation. The vendor could have developed other methods for meeting the accuracy standards. The vendor, like the IRS, was expected to fully develop the taxpayer's question to ensure accuracy of responses. However, the IRS used the information in the Probe and Response Guide to validate the accuracy for both the IRS and the vendor. In the solicitation for test vendors, all prospective bidders were advised that the successful bidder would receive "appropriate IRS publications, forms, instructions and training materials."

Finally, we believe that the report in its entirety should not be released publicly because it contains vendor proprietary information. The release of vendor data is barred by FAR § 9.105-3, concerning disclosure of preaward information, and FAR § 3.104-4, which prohibits release of source selection information. Additionally, the Freedom of Information Act (FOIA) prohibits the release of vendor data that would be barred from release by FAR § 3.104-4. The FOIA itself also specifically exempts from release pre-decisional documents. 5 U.S.C. § 552(b)(5).

Our specific comments regarding the report's recommendations are contained in the Attachment. If you have any questions, please contact Richard J. Morgante, Commissioner, Wage and Investment Division, at (404) 338-7060; Carl T. Froehlich, Chief, Agency-Wide Shared Services, at (202) 622-7500; or Raymona L. Stickell, Director, Competitive Sourcing, at (202) 927-7550.

Attachment

**Recommendation 1**

The Deputy Commissioner for Operations Support and the Commissioner, W&I Division, should rescind the September 2004 decision and eliminate use of the private-vendor Test results as justification for any decision regarding the merits of using the OMB Circular No. A-76 competitive sourcing process to determine the most efficient and cost-effective toll-free tax law telephone services provider.

**Corrective Action**

The IRS has no current plans to pursue a Business Case Analysis (BCA) for the Toll-Free Tax Law Operations. The feasibility test permitted the IRS to identify significant concerns of taxpayers regarding privacy and confidentiality, as well as concerns with quality of vendor tax law responses. However, should we determine in the future to pursue a BCA, we will consider all pertinent data, including test results and any audit recommendations, as we compile data to develop the BCA.

**Implementation Date**

N/A

**Responsible Official**

N/A

**Corrective Action Monitoring Plan**

N/A

**Recommendation 2**

The Chief, Agency-Wide Shared Services (AWSS), should expand the *IRS Guide to Competitive Sourcing* to define minimum standards for performing reliable and valid research studies and tests to prevent inefficient use of Federal Government funds in the performance of future studies/tests. These standards should require use of a structured research design model and data collection protocol that are most appropriate for meeting the objectives of the project and require creation of an evaluation plan that predefines performance standards with target performance values and composite scores that constitute success. The research standards should also require involvement by the IRS Research Division in the review of the research design plan and data collection procedures, prior to the performance of any tasks, and executive-level approval of the research design plan prior to implementation.

**Corrective Action**

The IRS agrees that improvements can be expected from updating the *IRS Guide to Competitive Sourcing* to include standards for valid research studies, in consultation with Research, Analysis, and Statistics at the IRS.

**Implementation Date**

May 15, 2006

**Responsible Official**

Director, Office of Competitive Sourcing OS:A:OCS

**Corrective Action Monitoring Plan**

The Director, Office of Competitive Sourcing, will coordinate with Research, Analysis, and Statistics to ensure that the *IRS Guide to Competitive Sourcing* is updated consistent with this recommendation.

**Recommendation 3**

The Commissioner, W&I Division, and the Chief, AWSS, should require any future Evaluation and Source Selection team members and Source Selection Official to sign a statement certifying they have no personal impairments that inhibit their ability to make a fair and impartial decision regarding the vendor proposals.

**Corrective Action**

Because the IRS' documented Source Selection procedures ensure that conflicts of interest and the appearance of conflicts of interest are avoided, we believe that these procedures substantially address the intent of this recommendation.

**Implementation Date**

N/A

**Responsible Official**

N/A

**Corrective Action Monitoring Plan**

N/A

**Recommendation 4**

The Commissioner, W&I Division, and the Chief, AWSS, should ensure any future solicitation related to the Toll-Free Tax Law Telephone Operation contains no expressed or implied requirements that private vendors use current IRS methodologies in proposing solutions to the requirements in the solicitation.

**Corrective Action**

The IRS uses performance-based contracts that define desired outcomes, as opposed to mandating methods, in order to meet the requirements of Competitive Sourcing public-private competitions. We will not prescribe the use of current Government methodologies in such contracts unless required to do so by law or regulation. Furthermore, the IRS provides training, tools, and templates to employees who write performance-based contracts to ensure that they follow proper procedures when

preparing such documents. We believe these factors substantially address the intent of this recommendation.

**Implementation Date**

N/A

**Responsible Official**

N/A

**Corrective Action Monitoring Plan**

N/A