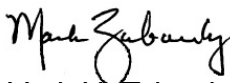




July 5, 2016

**MEMORANDUM FOR:** Barry E. Berkowitz  
Senior Procurement Executive and Director  
Office of Acquisition Management

**FROM:**   
Mark H. Zabarsky  
Assistant Inspector General for Acquisition  
and Special Program Audits

**SUBJECT:** *Review of National Oceanic and Atmospheric Administration's  
Sole-Source Contract Awarded to Industrial Economics, Inc.  
Regarding Gulf Oil Spill Expert Services  
Final Report No. OIG-16-036-1*

This report details the results of our review of the National Oceanic and Atmospheric Administration's (NOAA's) sole-source contract award to Industrial Economics, Incorporated. On April 20, 2010, an explosion on the British Petroleum (BP) Deepwater Horizon oil well drilling platform released approximately 4.9 million barrels (210 million gallons) of oil into the Gulf of Mexico. Our objective was to determine whether NOAA properly documented the justification of awarding a September 2011 sole-source contract with Industrial Economics, Incorporated. Based on our scoped review, the documentation appeared reasonable given the situation NOAA was in at the time of the contracting need.

## Background

To review the September 2011 sole-source contract, OIG needed to understand as background information the events that led up to that award. In 2006, NOAA awarded a contract to Industrial Economics, Incorporated, through a competitive process utilizing General Services Administration (GSA) schedule competitions. The contract—valued at \$10 million at the time of the Deepwater Horizon incident—was for natural resource damage assessment support capacity.<sup>1</sup> In June 2010, in response to the Deepwater Horizon incident that had occurred, NOAA noncompetitively increased the contract ceiling price from \$10 million to \$75.1 million on the standing natural resource damage assessment order to address the incident.

Months later, in mid-December 2010, the U.S. Department of Justice filed a lawsuit against BP, Transocean, and others concerning the Deepwater Horizon oil drilling rig spill. NOAA determined that it needed to continue contract support, to increase its capacity and

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<sup>1</sup> Natural resource damage assessment is the legal process that federal agencies like NOAA use to evaluate the impacts of oil spills, hazardous waste sites, and ship groundings on natural resources, both along the nation's coast and throughout its interior. See NOAA National Ocean Service. *What Is a Natural Resource Damage Assessment?* [online]. <http://oceanservice.noaa.gov/facts/nrda.html> (accessed May 5, 2016).

expertise—including services needed to support the Department of Justice’s litigation. Then, on April 1, 2011, the Department of Commerce’s Senior Procurement Executive approved a Justification for Other than Full and Open Competition (JOFOC)—increasing the ceiling again by another \$133 million on the Industrial Economics, Incorporated, contract due to the urgent and compelling litigation support circumstances of the ongoing natural resource damage assessment activities—and extended the contract through the end of the fiscal year (FY) 2011. Around the same time, the Senior Procurement Executive decided that no further contract extensions would be granted, because the original intent of the 2006 contract was not to cover the Deepwater Horizon work but other incidental needs as they arose. The scope of our review did not include this 2006 contract and its modifications.

## Results of Review

As a result of the oil spill and other actions outlined above, near the end of FY 2011 NOAA undertook to award a new sole-source contract to support its continuing need. Our review focused on the documented justification for this September 2011 contract.

Although competition is the preferred method of acquisition, in certain circumstances Federal Acquisition Regulation (FAR) subpart 6.3 permits for other than full and open competition. In September 2011, NOAA awarded a follow-on sole-source contract to Industrial Economics, Incorporated, valued at approximately \$161.8 million.<sup>2</sup> This contract was for

- supporting the NOAA Damage Assessment Remediation and Restoration Program capability to evaluate the effects of the Deepwater Horizon oil spill, as they relate to the natural resources and associated services of interest;
- completing a natural resource damage assessment to quantify damages and determine the appropriate restoration to compensate the environment and public for injured natural resources and associated lost services; and
- pursuing a claim against BP and other responsible parties under the Oil Pollution Act of 1990.<sup>3</sup>

As part of the follow-on contract award process, NOAA published a sources sought notice<sup>4</sup> in FedBizOpps.gov on October 22, 2010. Despite being advertised by NOAA as a sole-source procurement, 18 businesses—10 small businesses and 8 large businesses—responded to the sources sought notice informing NOAA that they could provide the required services.

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<sup>2</sup> The contract award consisted of a base period of 1 year and included four 1-year option periods.

<sup>3</sup> The Oil Pollution Act of 1990 (codified at 33 U.S.C. §§ 2701–2761) addresses the wide range of problems associated with preventing, responding to, and paying for oil pollution incidents in navigable waters of the United States. The Act created a comprehensive prevention, response, liability, and compensation regime to deal with vessel- and facility-caused oil pollution to U.S. navigable waters. See U.S. Coast Guard National Pollution Funds Center. *Oil Pollution Act of 1990 (OPA)* [online]. [http://www.uscg.mil/npfc/About\\_NPFC/opa.asp](http://www.uscg.mil/npfc/About_NPFC/opa.asp) (accessed May 5, 2016).

<sup>4</sup> The sources sought notice in a synopsis posted by a government agency in FedBizOpps for the purposes of seeking possible sources for a project. See Federal Business Opportunities. *Getting Started: Frequently Asked Questions* [online]. <https://www.fbo.gov/?static=faqs&s=getstart&mode=list&tab=list&tabmode=list#q7> (accessed May 6, 2016).

Ultimately, NOAA determined that only 3 of the 8 large businesses had the capabilities to meet the government's needs.<sup>5</sup>

The JOFOC<sup>6</sup> cited FAR 6.302-3(a)(2)(iii) "to acquire the services of an expert or neutral person for any current or anticipated litigation or dispute." In the JOFOC, contracting personnel explained that it is essential to maintain the continuity of services for work that is ongoing, using already identified experts and support personnel. Further, they explained, any delay in gathering information or a change in assessment approach because of new contractors would severely impact the determination of damages and greatly impact the ongoing litigation. The JOFOC additionally disclosed that

[t]he loss of these contractors at this point or the delay in providing services as a result of competition and the time to bring new contractors up to speed historically and procedurally, would be devastating to NOAA's critical Deepwater Horizon functions. Calendar years 2011 and 2012 are critical for further quantifying injuries as a result of the oil spill and developing the Government's claim for natural resource damages. The Department of Justice filed a lawsuit against the Responsible Parties in December 2010 and NOAA and the State and Federal agencies are on what is expected to be a two year schedule to be ready for court. If not prepared, the Federal Government and NOAA could face sanctions from the Court. NOAA cannot afford to change course at this time and expect to be prepared for litigation. NOAA cannot risk bringing on new contractors due to the loss of expertise and knowledge that has been developed in the current contract staff. The Government is reliant on consistent, well documented reports and data to support the upcoming litigation.

Due to the need to support the lawsuit and to maintain the continuity of work, after reviewing all capability statements, NOAA determined that it was crucial to have Industrial Economics, Incorporated, continue to provide the expert services. Based on the above information, we concluded that the contract documentation of the sole-source justification appeared reasonable, given the situation NOAA was in at the time of the contracting need.

This final report will be posted on OIG's website pursuant to section 8M of the Inspector General Act of 1978, as amended.

We appreciate the assistance and courtesies extended to us by your staff. If you have any questions, please contact me at (202) 482-3884 or Ken Stagner at (303) 312-7674.

cc: Benjamin Friedman, Deputy Under Secretary for Operations, NOAA  
Mitchell J. Ross, Director Acquisition & Grants Office, NOAA  
Mack Cato, Director, Audit & Information Management Office, NOAA

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<sup>5</sup> Two of those 3 businesses (Industrial Economics, Incorporated, and Stratus Consulting) were awarded the initial contract for natural resource damage assessment support capacity in 2006. Stratus Consulting was also awarded a sole-source contract in September 2011 that had a different scope and focus than the Industrial Economics, Incorporated contract.

<sup>6</sup> This JOFOC was approved by NOAA's Competition Advocate, NOAA's Head of Contracting Activity, and the Department's Senior Procurement Executive in June 2011 for a new sole-source contract award on September 23, 2011.

## Appendix Objective, Scope, and Methodology

Our objective was to determine whether NOAA properly documented the justification of awarding a sole-source contract with Industrial Economics, Incorporated. More specifically, we reviewed the contract files of Industrial Economics, Incorporated—procured and awarded by NOAA National Ocean Service under other than open and full competition in response to the Deepwater Horizon oil spill—to determine whether there were any irregularities in procuring and awarding the sole-source contract. We utilized the FAR and the Department’s *Commerce Acquisition Manual* as our criteria for measuring compliance.

NOAA Western Acquisition Division provided the pre-award contracts files of Industrial Economics, Incorporated, and we reviewed them to see if there were any irregularities in procuring and awarding the sole-source contracts and amendments. We reviewed the pre-award contract files at the NOAA Western Acquisition Division office in Boulder, Colorado, September 1–18, 2015. We accomplished our objective by doing the following:

- We traveled to NOAA’s Boulder, Colorado, acquisition office to examine the physical file contents for documents pertaining to the sole-source contract procurement process and awarding process, using the file index contained in each file for visual proof that the documents were present in the file. The following documents were obtained and reviewed:
  - JOFOC
  - acquisition plan
  - market research
  - surveillance plan
  - risk assessment
  - statement of work
  - contract award
  - contract modifications
  - designation of COR
- After returning from fieldwork, we reviewed and analyzed the obtained documents, as well as communicated with the NOAA point of contact to obtain more information when needed.
- We summarized results and conclusion based on information collected during the audit.

We gained an understanding of internal control processes significant within the context of the audit objectives by reviewing the documentation for evidence of controls. We did not rely on computer processed data to complete this audit. Finally, our work found no instances of fraud, illegal acts, or abuse. From these efforts, we believe the information we obtained is sufficiently reliable for this report.

This review was conducted under the authority of the Inspector General Act of 1978, as amended, and Department Organization Order 10-13, dated April 26, 2013, at NOAA's office in Boulder, Colorado. We conducted our fieldwork from August 2015 to May 2016 in accordance with the *Quality Standards for Inspection and Evaluation* (January 2012) issued by the Council of the Inspectors General on Integrity and Efficiency.

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