

GAO

Report to the Chairman, Subcommittee
on International Organizations, Human
Rights, and Oversight, Committee on
Foreign Affairs, House of
Representatives

July 2008

BROADCASTING TO CUBA

Weaknesses in Contracting Practices Reduced Visibility into Selected Award Decisions



GAO
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Highlights

Highlights of [GAO-08-764](#), a report to the Chairman, Subcommittee on International Organizations, Human Rights, and Oversight, Committee on Foreign Affairs, House of Representatives

Why GAO Did This Study

The United States has long provided the Cuban people with alternative sources of news and information. As part of this effort, in December 2006 the International Broadcasting Bureau (IBB) awarded sole-source contracts to two Miami radio and television stations—Radio Mambi and TV Azteca—to provide additional broadcasting options. Additionally, the Office of Cuba Broadcasting (OCB) annually awards millions of dollars in contracts for talent services—writers, reporters, and technical support—needed to produce and broadcast news and entertainment programming.

GAO evaluated the processes used to award (1) the Radio Mambi and TV Azteca broadcasting contracts, and (2) talent services contracts. We reviewed contract files and other documentation and interviewed program managers and contracting officers to determine the process used to award the two broadcasting contracts and a nongeneralizable selection of 37 talent services contracts.

What GAO Recommends

GAO recommends that the Broadcasting Board of Governors reinforce existing policy and guidance to plan for and employ appropriate competitive approaches, adequately document key decisions, ensure the timely involvement of stakeholders, and improve the clarity and usefulness of IBB’s guidance. While it did not formally comment on the recommendations, BBG indicated it is taking steps to implement them.

To view the full product, including the scope and methodology, click on [GAO-08-764](#). For more information, contact John Hutton at (202) 512-4841 or huttonj@gao.gov.

BROADCASTING TO CUBA

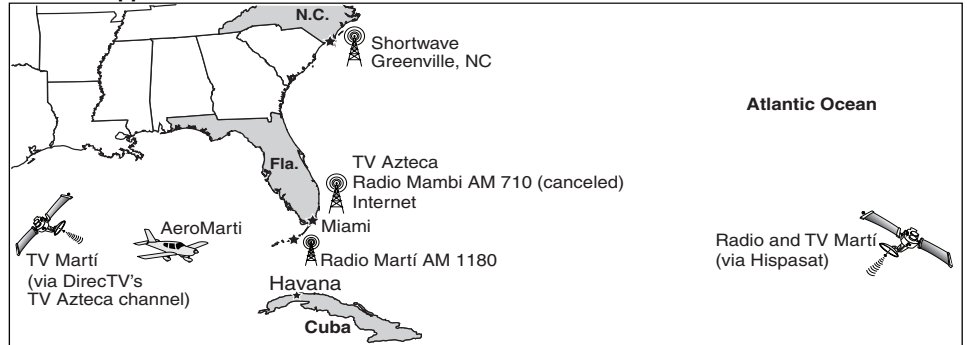
Weaknesses in Contracting Practices Reduced Visibility into Selected Award Decisions

What GAO Found

IBB’s approach for awarding the Radio Mambi and TV Azteca contracts did not reflect sound business practices. According to officials from IBB and the Broadcasting Board of Governors—IBB’s and OCB’s parent organization—the confluence of several interrelated events—ongoing interagency deliberations, the issuance of a July 2006 report by a Cabinet-level commission, and concerns about the health of Fidel Castro—required them to quickly obtain additional broadcasting services to Cuba. Competition laws and regulations provide agencies considerable flexibility to use noncompetitive procedures, if adequately justified, to meet their needs. In certain respects, however, IBB did not fully document in its contract files key information or assumptions underlying its decisions to not seek competitive offers, limit the number of potential providers it considered, or the basis used to negotiate the final prices for the services provided. Additionally, IBB did not actively involve its contracting office until just prior to contract award, though agency regulations and our prior work identify that timely involvement by stakeholders helps promote successful acquisition outcomes. Finally, though it partly justified its awards based on urgency, IBB exercised multiple options on the two contracts to extend their period of performance into 2008. Only recently has it taken steps to identify additional providers.

OCB’s practices for soliciting, evaluating, and selecting its talent contractors provide limited visibility at key steps. OCB issues quarterly announcements in *Federal Business Opportunities*, advertises annually in a local newspaper, and posts announcements at OCB’s headquarters. OCB does not require, however, that managers document instances in which resumes were received from sources outside these processes, such as when a contractor is recommended by an OCB employee. Further, OCB does not document why other potential providers were not selected as required by IBB’s guidance, in part due to questions about how to meet this requirement. Lastly, OCB managers use an IBB handbook to justify how much it pays for talent services, but the usefulness of the handbook’s pricing guidance may be limited as the recommended rates are not current or based on the local market.

Selected Approaches Used to Broadcast to Cuba



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Abbreviations

BBG	Broadcasting Board of Governors
FAR	Federal Acquisition Regulation
IBB	International Broadcasting Bureau
OCB	Office of Cuba Broadcasting

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United States Government Accountability Office
Washington, DC 20548

July 11, 2008

The Honorable William D. Delahunt
Chairman
Subcommittee on International Organizations,
Human Rights, and Oversight
Committee on Foreign Affairs
House of Representatives

Dear Mr. Chairman:

The Office of Cuba Broadcasting (OCB) was established to counter the Cuban government's restriction of information through its control of the free press and interference with other means of communication. Since 1985 OCB has provided Spanish-language news, features, and entertainment programs to Cuba through Radio Martí and, since 1990, TV Martí. OCB operates under the auspices of the Broadcasting Board of Governors (BBG), an independent agency that oversees all U.S. international, nonmilitary broadcasting services.¹ Within the BBG, the International Broadcasting Bureau (IBB) is responsible for managing the overall operations of OCB² as well as the Office of Engineering and Technical Operations, the Office of Contracts, and the Office of Marketing and Program Placement.

IBB also provides contract management guidance, oversees the procurement process, and awards contracts that exceed \$100,000 on behalf of OCB. In this capacity, IBB awarded two sole-source contracts in December 2006 to two commercial stations—Radio Mambi and TV Azteca—for radio and television broadcasting services. IBB has delegated to OCB the authority to contract for a range of services, including “talent”

¹In addition to the Office of Cuba Broadcasting (Radio and TV Martí), the BBG supervises a number of other broadcast entities, including the Voice of America (VOA), Radio Free Europe/Radio Liberty (RFE/RL), Radio Free Asia, and the Middle East Broadcasting Networks (MBN). VOA offers radio and television programming in 45 languages around the world. RFE/RL broadcasts in 28 languages, 18 of which are directed to countries or regions where the majority populations are Muslim. Radio Free Asia broadcasts in 9 languages to China, Tibet, Burma, Vietnam, Laos, Cambodia, and North Korea. MBN broadcasts 24 hours a day to the Middle East in Arabic through its Alhurra Television and Radio Sawa networks.

²IBB also manages the overall operations of the Voice of America. The other broadcasters operate as corporate grantees and report directly to BBG.

services, such as writers, performers, program hosts, reporters, and technical support required to produce and broadcast radio and TV news and entertainment programming.

In November 2007 you asked us to review various issues associated with OCB's contracting procedures.³ Specifically, we evaluated the process used (1) by IBB to award the Radio Mambi and TV Azteca contracts, and (2) by OCB to award its talent contracts. We reviewed requirements governing competition, including the Competition in Contracting Act, the Federal Acquisition Regulation (FAR), and IBB's *Contracting for Talent and Other Professional Services Handbook*, which provides guidance on current policies, information, and procedures for acquiring and using talent services contractors. We reviewed the files supporting the Radio Mambi and TV Azteca contracts and a nongeneralizable, stratified random selection of 37 contracts for various talent services awarded by OCB from fiscal years 2005 through 2007. We also interviewed IBB and OCB program managers and contracting officials to determine the process used to develop requirements, conduct solicitations, and select contractors. For contracts awarded using other than full and open competition, we reviewed the justification and approval documents and other unclassified documents supporting the award decisions. Additional information on our scope and methodology may be found in appendix I.

We conducted this performance audit from February 2008 through June 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Results in Brief

IBB's approach for awarding the Radio Mambi and TV Azteca contracts did not reflect sound business practices in certain key aspects. IBB's approach was predicated on the confluence of several interrelated events—ongoing interagency deliberations, the issuance of a July 2006

³You also requested that we assess OCB's management effectiveness and broadcasting operations. We are continuing to review these issues under a separate engagement.

report by the Commission for Assistance to a Free Cuba,⁴ and concerns about the health of Fidel Castro. According to BBG and IBB officials, these events required a course of action to obtain additional broadcasting services to Cuba quickly by using other than full and open competition. Competition laws and regulations provide agencies considerable flexibility to use noncompetitive procedures, if adequately justified, to meet their needs. In certain respects, however, IBB did not document in its contract files key information or assumptions underlying its decisions to not seek competitive offers, limit the number of potential providers it considered, or the basis used to negotiate the final prices for the services provided. In addition, IBB did not actively involve its contracting office until just prior to contract award. Finally, while justifying the December 2006 award of the two contracts on the basis of urgent and compelling need and the determination that only one source would meet its minimum needs, IBB chose to exercise multiple options on the two contracts to extend their period of performance into 2008 and has only recently taken steps to identify additional providers.

OCB's practices provide limited visibility into key steps in soliciting, evaluating, and selecting its talent services contractors. OCB met solicitation requirements by issuing quarterly announcements in *Federal Business Opportunities*⁵ in addition to advertising annually in a local newspaper and posting announcements at OCB's headquarters. OCB does not require, however, that managers document instances in which resumes were received from sources outside the formal solicitation process. Further, OCB requires managers only to document their recommendations for service providers for contract award, without discussion of why other potential providers were not selected. IBB officials told us they would expect that pursuant to their guidance the contract files would contain such documentation. Additionally, OCB relies on the rates provided by IBB's *Contracting for Talent and Other Professional Services Handbook* to justify how much it pays for talent services. The usefulness of the handbook's pricing guidance, however, may be limited as the rates in the handbook are not current or based on the local Miami market and because OCB, at times, has reduced the rates it pays due to budget constraints. In this regard, all of the rates included in the talent services contracts we

⁴The Cabinet-level commission was tasked to explore ways the U.S. can hasten and ease a democratic transition in Cuba.

⁵*Federal Business Opportunities* (www.fedbizopps.gov) is the government's official Web site for posting proposed contract actions and solicitations.

reviewed were either within or below the range of rates provided by IBB's handbook. In general, OCB officials believe that they are paying their talent services contractors below market rates.

To promote competition and enhance transparency in OCB's contracting efforts, including those awarded on OCB's behalf by IBB, we are making five recommendations to the Broadcasting Board of Governors. These recommendations reinforce the importance of adhering to existing federal and agency guidance to plan for and employ appropriate competitive approaches, to document information and assumptions underlying key decisions, and to ensure that relevant stakeholders are involved in acquisition planning at the earliest possible time. We also recommend that IBB assess how to improve the clarity and usefulness of its *Contracting for Talent and Other Professional Services Handbook*.

In written comments on a draft of this report, BBG provided additional context for their actions but did not formally comment on our recommendations. BBG subsequently informed us that it did not take exception to our recommendations and steps have been taken to implement them. The full text of BBG's comments may be found in appendix II.

Background

For nearly 25 years, the United States has provided the Cuban people with alternative sources of news and information. In 1983, Congress passed the Radio Broadcasting to Cuba Act⁶ to provide the people of Cuba, through Radio Martí, with information they would not ordinarily receive due to the censorship practices of the Cuban government. Subsequently, in 1990, Congress authorized BBG⁷ to televise programs to Cuba.⁸ According to BBG, the objectives of Radio and TV Martí are to (1) support the right of the Cuban people to seek, receive, and impart information and ideas through any media and regardless of frontiers; (2) be effective in furthering the open communication of information and ideas through use of radio and television broadcasting to Cuba; (3) serve as a consistently reliable and authoritative source of accurate, objective, and

⁶Pub. L. No. 98-111 (1983).

⁷In 1999, the BBG became an independent agency, a successor agency to the United States Information Agency, which Congress had authorized to broadcast Radio and TV Martí programming to Cuba.

⁸Pub. L. No. 101-246, §§ 241 to 246 (1990).

comprehensive news; and (4) provide news, commentary, and other information about events in Cuba and elsewhere to promote the cause of freedom in Cuba.

OCB employs several avenues to broadcast to Cuba, including shortwave, AM radio, and television through various satellite providers and airborne and ground-based transmitters (see fig. 1). IBB's international broadcasters generally must comply with the provisions of the U.S. Information and Educational Exchange Act of 1948 (commonly known as the Smith-Mundt Act), as amended, which bars the domestic dissemination of official American information aimed at foreign audiences.⁹ In 1983, however, the Radio Broadcasting to Cuba Act authorized the leasing of time on commercial or noncommercial educational AM radio broadcasting stations if it was determined that Radio Martí's broadcasts to Cuba were subject to a certain level of jamming or interference.¹⁰ Similarly, in 1990, the Television Broadcasting to Cuba Act authorized BBG to broadcast information to the Cuban people via television, including broadcasts that could be received domestically, if the receipt of such information was inadvertent.¹¹ BBG has interpreted the act to allow OCB to use domestic television stations.¹²

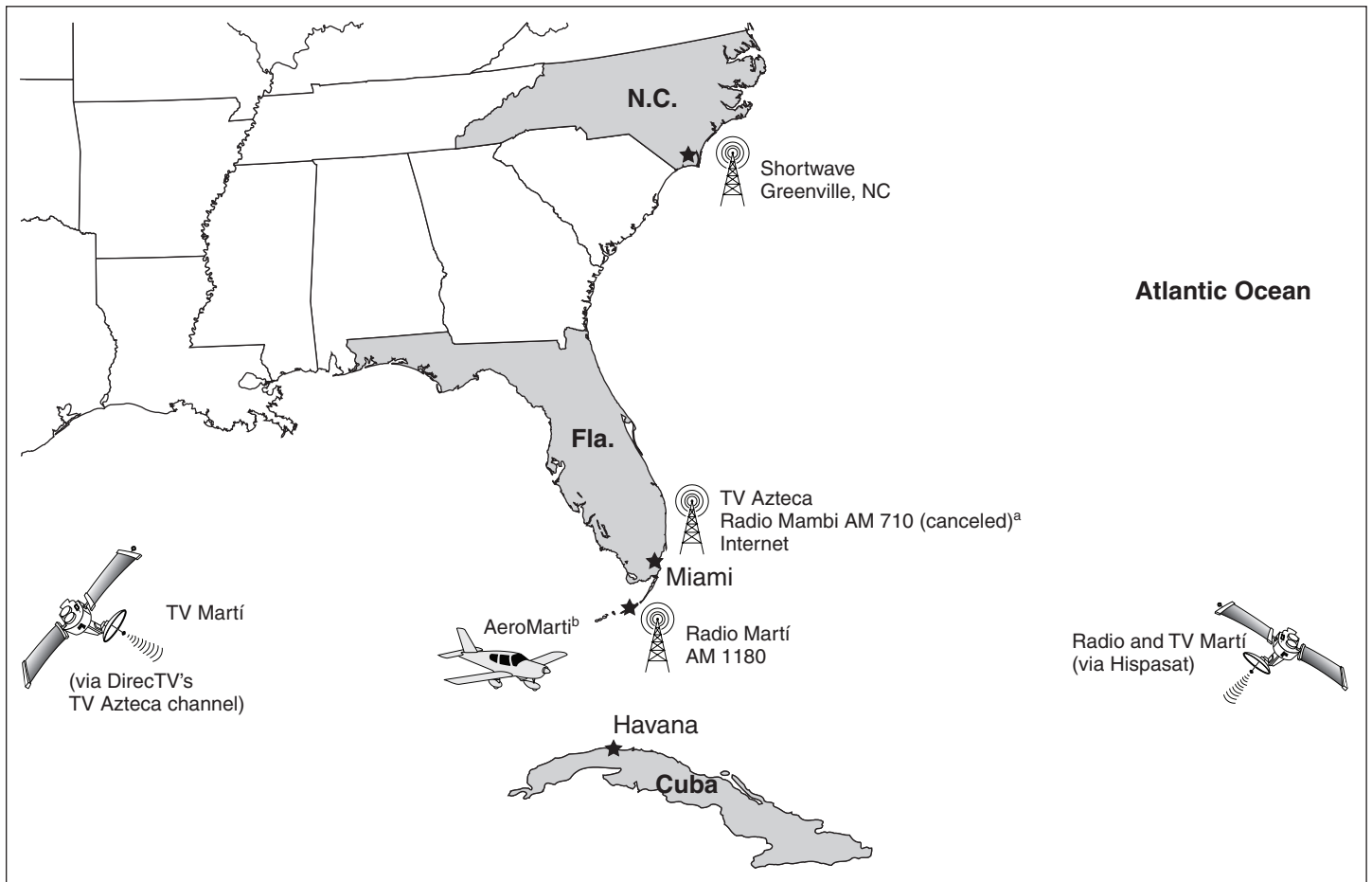
⁹22 U.S.C. § 1461.

¹⁰Pub. L. No. 98-111, § 3(d) (1983).

¹¹Pub. L. No. 101-246, § 243(a) (1990).

¹²We are continuing to review OCB's broadcasting operations, including those involving domestic stations, under a separate engagement.

Figure 1: Selected Approaches Used to Broadcast to Cuba



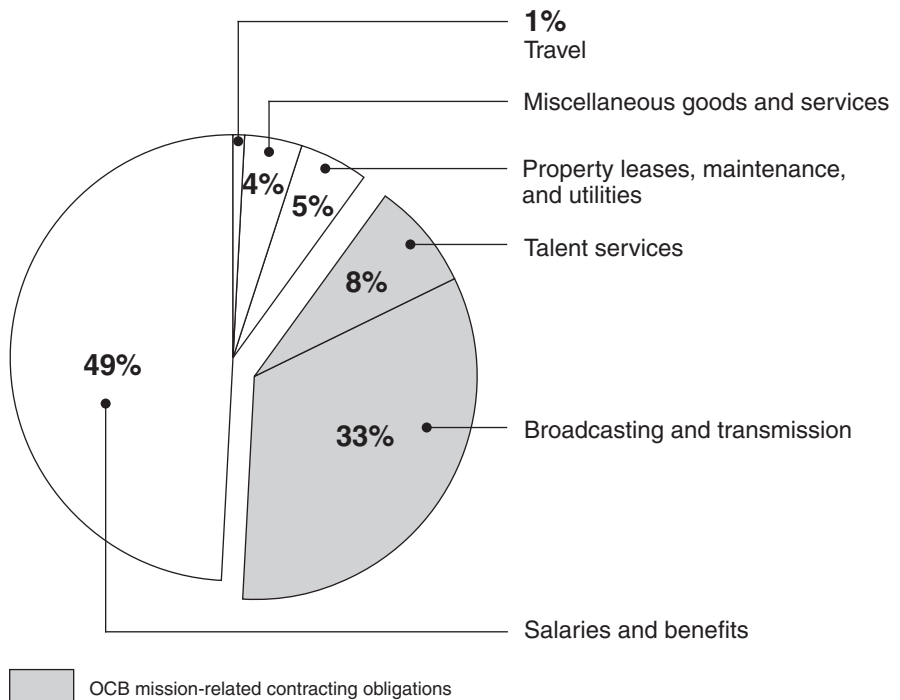
Source: Copyright © Corel Corp. All rights reserved (map); Art Explosion; IBB.

^aOCB's contract with Radio Mambi ended in February 2008.

^bAeroMartí comprises two Gulfstream propeller planes that OCB leases to broadcast TV Martí programming on Channel 20 (UHF) Monday through Saturday. Beginning in July 2008, one aircraft will be equipped to broadcast on Channel 13 (VHF).

In fiscal year 2007, OCB obligated over \$35 million in support of its mission. As shown in figure 2, OCB obligated about 50 percent of this amount to salaries, benefits, and travel for OCB employees and 41 percent on mission-related contracting efforts. OCB obligated nearly \$3 million to procure talent services.

Figure 2: OCB Fiscal Year 2007 Obligations



Source: GAO analysis; BBG Chief Financial Officer data.

Federal statutes require, with certain limited exceptions, that contracting officers shall promote and provide for full and open competition in soliciting offers and awarding government contracts.¹³ The FAR states that full and open competition, when used with respect to a contract action, means that all responsible sources are permitted to compete.¹⁴ The process is intended to permit the government to rely on competitive market forces to obtain needed goods and services at fair and reasonable prices. When not providing for such competition, the contracting officer must, among other things, justify the reason for using other than full and open competition, solicit offers from as many potential sources as is practicable under the circumstances, and consider actions to facilitate competition for any subsequent acquisition of supplies or services. For contracts that do

¹³ 10 U.S.C. § 2304 and 41 U.S.C. § 253.

¹⁴ FAR 2.101.

not exceed the simplified acquisition threshold—currently \$100,000 with limited exceptions—contracting officers are to promote competition to the maximum extent practicable.

In December 2006, IBB awarded contracts to two Miami-based radio and television broadcasting stations, Radio Mambi and TV Azteca, to broadcast Radio and TV Martí programming, respectively. IBB justified the use of other than full and open competition on the basis of two specific statutory authorities cited in the FAR—that there was only one responsible source capable of meeting the agency’s needs and that there was an unusual and compelling urgency to award the contract.¹⁵ Table 1 provides selected information on the two contracts.

¹⁵FAR 6.302-1 and FAR 6.302-2. Under the FAR, agencies are generally not permitted to use the exception that only one responsible source is capable of meeting their needs when any of the other exceptions are applicable. In citing two exceptions, certain requirements pertaining to public notice of proposed contract actions and contract award come into conflict. For example, when the exception that only one responsible source is cited, agencies are generally required to synopsise their requirements in *Federal Business Opportunities*. Agencies are not required to do so when citing the unusual and compelling urgency exception. In this case, IBB did not synopsise its proposed contract actions.

Table 1: Selected Information on IBB’s Contracts for Radio and Television Broadcasting Services

	Radio broadcasting services (Radio Mambi)	Television broadcasting services (TV Azteca)
Broadcaster	Univision Radio Florida WAQI – 710 AM	TVC Broadcasting of Miami Channel 38
Date awarded	December 19, 2006	December 18, 2006
Base period of performance	December 20, 2006 to June 19, 2007	December 18, 2006 to June 17, 2007
Terms of base contract	Radio broadcasting services, Monday through Friday, midnight to 12:30 a.m. and 12:30 a.m. to 1:00 a.m.	<ul style="list-style-type: none"> • 26 minutes of live news provided by OCB, Monday through Friday, 6:00 p.m. to 6:30 p.m. • 26 minutes of updated news and public affairs provided by OCB, Monday through Friday, 11:30 p.m. to midnight. • At no additional cost, 15 30-second promotion spots during the week at prime time. • At no additional cost, as many 1-minute newsbreaks as OCB can provide up to one newsbreak per hour, between noon and midnight, 7 days a week.
Options and modifications	<p>Option: Extend the period of performance for six additional 6 month periods (exercised two periods).</p> <p>Modification of the second option period: Due to budgetary uncertainty, the modification extended the contract to January 31, 2008, and then provided for radio broadcast services thereafter on a month-to-month basis (issued December 2007). IBB ended the contract on February 29, 2008.</p>	<ul style="list-style-type: none"> • Option: Extend the period of performance for an additional 6 month period, from June 18, 2007, through December 17, 2007 (exercised). • Option: Extend the period of performance for an additional 12 month period, from December 18, 2007, through December 17, 2008 (exercised 6 months of this option). • Option: Broadcast two one-half hour programs on Saturdays, to include 10 promotional announcements (exercised in part). • Option: Allow OCB to provide programming on a 24-hour basis to TVC for broadcasting on Channel 38 as TVC’s broadcasting schedule permits (not exercised). • Modification: Two additional hours of broadcasting per day from midnight to 2:00 a.m. beginning March 3, 2008, through June 17, 2008 (issued February 2008).
Total obligations	\$182,500.50 for 6-month base period. As of February 2008, obligations totaled \$438,001.20.	\$195,000 for 6-month base period. As of February 2008, obligations totaled \$631,450.

Source: GAO analysis; IBB contract files.

OCB’s talent services contracts typically fall below the simplified acquisition threshold and therefore are solicited and awarded directly by OCB. OCB generally awards each talent services contractor a blanket purchase agreement, which provides OCB a simplified method of

obtaining specific services as needed during the course of the year.¹⁶ On a quarterly basis, OCB places orders against the agreements, specifying the anticipated amount of services required during that period. While certain competition requirements do not apply below the simplified acquisition threshold, contracting officers are to promote competition to the maximum extent practicable.

IBB'S Approach for Awarding Selected Radio and Television Broadcasting Contracts Did Not Reflect Sound Business Practices

IBB's approach for awarding the Radio Mambi and TV Azteca contracts did not reflect sound business practices in certain key aspects. IBB's approach was predicated on the confluence of several interrelated events—ongoing interagency deliberations, the issuance of a July 2006 report by the Commission for Assistance to a Free Cuba, and concerns about the health of Fidel Castro. According to BBG and IBB officials, these events required a course of action to obtain additional broadcasting services to Cuba quickly by using other than full and open competition. In certain respects, however, IBB did not document in its contract files key information or assumptions underlying its decisions to not seek competitive offers, limit the number of potential providers it considered, or the basis used to negotiate the final prices for the services provided. In addition, IBB did not actively involve its contracting office until just prior to contract award. Finally, while justifying the December 2006 award of the two contracts on the basis of urgent and compelling need and the determination that only one source would meet its minimum needs, IBB chose to exercise multiple options on the two contracts to extend their period of performance into 2008 and has only recently taken steps to identify additional providers.

IBB Did Not Document Key Information Supporting Its Acquisition Approach

Our prior work has found that establishing a valid need and translating that into a well-defined requirement is essential for federal agencies to obtain the right outcome.¹⁷ Our review of IBB's contract files and interviews with program and contracting officials identified several interrelated events that established the need to increase radio and

¹⁶FAR 13.303 provides guidance on the use of blanket purchase agreements by federal agencies.

¹⁷For example, without well-defined requirements, an organization increases the risk that it will pay too much for the services provided; acquire services that do not meet its needs; or enter too quickly into a sensitive arrangement that exposes the organization to financial, performance, or other risks.

television broadcasting to Cuba. BBG and IBB officials noted that beginning in the spring of 2006, agency officials were involved in interagency discussions with officials from the Department of State, the Department of Defense, the National Security Council, the U.S. Agency for International Development, and other agencies on the need to expand broadcasting options. These discussions coincided with the issuance of the July 2006 report by the Commission for Assistance to a Free Cuba, which recommended funding the transmission of TV Martí by satellite television.¹⁸ The report did not provide a time frame in which this was to be completed, nor did it address expanding radio broadcasting. Additionally, BBG and IBB officials noted that shortly after the release of the report there was widespread concern about the health of Fidel Castro and that his death could result in unrest in Cuba, adding to the urgency to find additional ways to broadcast news to Cuba. IBB officials told us that based on their internal deliberations and discussions with other agencies involved, it was clear that the expectation was for IBB to quickly identify additional broadcasters, including radio providers, and award the resulting contracts quickly to address potential unrest in the event of a transfer of power. IBB officials were unable to provide documentation of certain classified aspects of the deliberations, or the specific time frame in which these activities were to be completed.

Given this expectation, IBB subsequently decided against seeking competitive offers from radio and television broadcasters. IBB officials told us they believed they could not do so for several reasons, including concerns that

- publicly seeking competitive offers would not yield responses from potential service providers that met its needs;
- advertising its plans would alert the Cuban government of IBB's intentions, which might enable Cuba to jam the new broadcasts; and
- IBB had not discussed its plans with cognizant congressional committees and, in particular, its efforts to comply with the Smith-Mundt Act and other relevant legislation.

¹⁸The Cabinet-level commission was tasked to explore ways the U.S. can help hasten and ease a democratic transition in Cuba. The commission issued its first report in May 2004. The Secretary of State subsequently tasked the commission in December 2005 to prepare a second report with updated recommendations and a strategic plan to assist a Cuban-led transition. The reports may be found on the commission's Web site at <http://www.cafc.gov>.

IBB officials determined that they would limit the number of providers they would consider and quickly developed a set of basic requirements that broadcasters would need to meet. For radio, IBB wanted a Spanish-language station with the strongest AM signal to reach as much of Cuba as possible. To do so, officials with IBB's Office of Marketing and Program Placement stated they reviewed a prior consulting study and broadcasting databases maintained by the Federal Communications Commission, and consulted with OCB on Cuban listening habits. For television, IBB wanted a station with a limited domestic audience and one that had a contract with DirecTV, since the DirecTV signal can be received in Cuba.¹⁹ At IBB's request, OCB provided a list of Miami channels carried by DirecTV, highlighting three Spanish-language stations and one English-language station for consideration. BBG and IBB officials subsequently told us that their decision to limit television broadcasters to the Miami area was based on information that indicated that DirecTV receivers in Cuba likely came from the Miami area and therefore were programmed to receive only Miami television stations. A senior IBB official provided IBB's Office of Engineering a list of four radio and three television stations and requested that the office assess the extent to which the television stations' signals were viewable in the United States and the extent to which the radio stations' signals would reach Cuba. Office of Marketing and Program Placement officials then made two trips to Miami to meet with and determine these stations' willingness to broadcast Radio and TV Martí programming.

In making their recommendation for a radio broadcaster to a senior IBB official, Marketing and Program Placement officials concluded that Radio Mambi provided the most powerful signal among those stations surveyed that could reach most of Cuba. IBB officials acknowledged, however, that this station was likely jammed in Havana as there is a Cuban station that broadcasts on the same frequency as Radio Mambi. IBB officials believed that broadcasting on two frequencies that cover most of Cuba would be the most effective way to overcome the Cuban government's jamming efforts. In recommending a television broadcaster, Marketing and Program Placement officials initially recommended a television station (other than TV Azteca) based on the station's verbal offer to split its DirecTV signal, enabling it to broadcast TV Martí programming only to Cuba and not to domestic audiences. According to IBB officials, subsequent to their

¹⁹DirecTV is a satellite-based provider of digital television services to customers in the United States and Latin America.

recommendation the television broadcaster withdrew its offer once it determined it could not split its DirecTV signal and was unwilling to sell time for which it already had programs. Consequently, IBB decided to contract with TV Azteca. While TV Azteca's broadcasts could be viewed by domestic audiences, IBB officials believed that since its signal covered a small domestic area, it better met the intent of the Smith-Mundt Act to limit the extent to which broadcasts intended for foreign audiences could be received domestically.

In a sole source environment, the government cannot rely on market forces to determine a fair and reasonable price and therefore must conduct market research to do so. As part of its market research, IBB officials in August and September 2006 asked a consultant to gather pricing information from the radio and television stations being considered without identifying IBB as the potential buyer. The consultant forwarded prices quoted by seven radio and television stations which varied significantly in terms of the dates, time slots, and prices offered. For instance, the information quoted by the television stations was based on one-half hour "infomercials,"²⁰ which IBB officials believed was useful to gauge the relative prices that might be offered by the stations, but was of only limited value to negotiate specific prices for the actual programming it sought to broadcast. While the contract files did not provide the basis by which IBB determined the final prices, IBB officials stated that after they had selected Radio Mambi and TV Azteca, the stations provided quotes for various broadcast times, which IBB officials used to reach a final price agreement.

IBB's Contracting Office Had Limited Involvement in Developing Acquisition Strategy

According to BBG's acquisition regulations, programming offices should discuss a prospective request for other than full and open competition with the contracting office as early as possible during the acquisition planning stage. The regulations note that these discussions may resolve uncertainties, provide offices with names of other sources, and allow proper scheduling of the acquisition, among other benefits. Further, our prior work has found that to promote successful acquisition outcomes, stakeholders with the requisite knowledge and skills must be involved at the earliest point possible. This helps ensure that the acquisition is

²⁰"Infomercials" generate additional revenue for the broadcaster based on a percentage of orders placed with or inquiries made to the station in response to the infomercial. Consequently, according to IBB officials, broadcasters typically would charge less for an infomercial than they would for a comparable time for paid programming.

executable and tailored to the level of risk commensurate with the individual transaction.

We found, however, that neither the contracting or legal offices were actively involved in developing the acquisition strategies for the radio and television broadcasting services, nor were they involved in developing or reviewing the terms and conditions until very late in the acquisition process. For example, according to IBB officials, the substance of the agreements with the radio and television broadcasters was generally completed by mid-October 2006. However, the contracting officer who awarded the contracts indicated he was not made aware of the planned acquisition until Friday, December 1. At that time, IBB notified the contracting officer to prepare to award the contracts as early as the following Monday, based on the terms and conditions that Marketing and Program Placement officials had agreed to with the broadcasters. According to representatives from IBB's contracting and legal offices, they had been unaware of the proposed contract actions until that time, precluding their ability to provide input into the acquisition strategy or to assess the potential for conducting a more robust competition. As a result, the contracting office's role appeared to be limited to verifying the terms and conditions that the programming officials had reached with the broadcasters during their internal assessment.

IBB Has Taken Only Limited Action to Plan for Future Competition

When agencies cite urgency as the basis for using other than full and open competition, the FAR requires them to describe the actions, if any, the agencies will take to remove the barriers for competition before any subsequent acquisition for the services is required. IBB, however, had taken few steps to determine how it might compete future broadcasting requirements. Rather, IBB extended the radio broadcasting contract by just over 8 months through February 2008, when it ended the contract due to budget constraints. Similarly, IBB exercised two options to extend the television broadcasting contract by a total of 12 months to June 2008.

IBB's contracting officer told us that, in his opinion, by December 2007 IBB had sufficient knowledge of its requirements, and sufficient time to plan for and conduct a full and open competition, if IBB continued to require these services. As an interim measure, on April 25, 2008, agency officials advertised in *Federal Business Opportunities*²¹ their intention to

²¹*Federal Business Opportunities* (www.fedbizopps.gov) is the government's official Web site for posting proposed contract actions and solicitations.

exercise the final option with TV Azteca to extend contract services into December 2008. In the notice, IBB officials identified the specific times during which TV Martí programming was being broadcast and the other services provided by TV Azteca and requested that interested firms submit adequate documentation of their capability to provide these services. While the notice did not constitute a solicitation and IBB was not seeking proposals, quotes, or bids, the notice indicated that if IBB received responses it might consider competing the contract rather than exercise the option. IBB received no responses to the notice within the 15-day time period allowed.

OCB's Practices Provide Limited Visibility into Key Steps When Acquiring Talent Services Contractors

OCB's practices provide limited visibility into key steps in soliciting, evaluating, and selecting its talent services contractors. In that regard, OCB does not require that managers document instances in which resumes were received from sources other than formal solicitation means nor require that managers document their evaluation of the resumes received. IBB officials told us they would expect that pursuant to their guidance the contract files would contain such documentation. Additionally, OCB relies on the rates provided by IBB's *Contracting for Talent and Other Professional Services Handbook* when justifying what it pays for talent services. The usefulness of the handbook's pricing guidance, however, may be limited as the rates in the handbook are neither current nor based on the local Miami market and because OCB, at times, has reduced the rates it pays due to budget constraints. In general, OCB officials believe that they are paying their talent services contractors below market rates.

Both the FAR and IBB guidance require that contracts be competitively solicited and awarded. To identify qualified contractors, OCB seeks resumes through three different means of solicitation: (1) quarterly *Federal Business Opportunities* notices, (2) annual advertisements in the Miami Herald newspaper, and (3) public building notices in OCB's lobby. These solicitations generally identify the wide range of services OCB requires annually, but do not specify the amount of work required or when the work may be needed.²² According to OCB officials, these solicitations result in a continuous stream of resumes throughout the year that are

²²For example, on July 24, 2006, OCB advertised in *Federal Business Opportunities* that it was seeking sources to perform over 25 distinct services including researchers, writers, directors, producers, narrators, translators, graphic artists, and various technicians.

directed to its contracting office. Overall, an OCB official estimated OCB received over 600 resumes in 2006. Contracting officials group the resumes into talent and production services categories and distribute them to the pertinent radio, television, and technical managers.

OCB's practices, however, provide limited visibility into the source of the resumes it receives, including those that may be received from outside the formal solicitation processes. In 31 of the 37 contract files we reviewed, OCB provided copies of all three formal solicitations to document compliance with competitive solicitation requirements. In at least three instances, however, the file contained this documentation even though the managers we interviewed stated that the resume was obtained through a recommendation from an OCB employee or contractor. In one case, for example, a manager noted that the broad nature of the solicitation did not provide suitable candidates for a specific requirement. Consequently, the manager solicited referrals from colleagues and through this means found a contractor who met the requirement. All of the seven managers we spoke with indicated that they have received, at one point or another, resumes from outside of the formal solicitation process. A senior OCB official stated that OCB does not, however, require program managers to document when resumes are received outside of the formal solicitation process. A senior IBB contracting official stated that any resume received informally should be sent to OCB's contracting office, which in turn should distribute it to the relevant managers for consideration along with all of the other resumes received.

Further, OCB managers do not document their evaluation of the resumes they review or their rationale for selecting one contractor over another. After receiving resumes from the contracting office, the managers are responsible for evaluating the resumes and, in turn, recommending contractors for award. Six managers said that they reviewed the resumes they received to different degrees. For example, some managers indicated that they always reviewed the resumes obtained through OCB's formal solicitations when selecting a contractor, though none documented their assessments. On the other hand, three managers indicated that they have selected contractors based on the recommendation of an OCB employee without reviewing other resumes. While each of the 37 contract files we reviewed documented the rationale for selecting the contractor, there was no documentation to indicate that other potential contractors were considered. The *Contracting for Talent and Other Professional Services Handbook* requires, however, that contracting personnel maintain contract files, which must contain a justification for the contractor selected along with an evaluation of prospective contractors. OCB contracting officials

told us that the guidance was not clear on how OCB was to meet this requirement. Senior IBB contracting officials with whom we spoke told us that pursuant to the guidance in the handbook, they would expect to see documentation in OCB's contract files of all the contractors considered and their rationale for selecting one contractor over another.

After selecting a talent services contractor for award, OCB managers generally rely on the price ranges established in IBB's handbook to justify the price OCB will pay for the service.²³ In that regard, we found that the rates for each of the 37 contracts we reviewed were within or below the rates established in IBB's handbook. OCB managers explained that the rates actually paid may fall below IBB's guidance because OCB's budgetary resources limit what it can afford to pay for these services. For example, an OCB manager told us that in February 2008 the decision was made to reduce programming costs, including decreasing the rates paid to many contractors, to stay within OCB's budget. The usefulness of the handbook's pricing guidance may be further limited given that the rates reflected in the handbook are not based on the local Miami market and are not current. For example, the market research used to support the rates for on- and off-camera performers was dated between October 2000 and February 2001 and only referenced prices in the Washington D.C., and Baltimore, Maryland, areas. IBB indicated that it is in the process of determining how to update its handbook, including its guidance on how managers and contracting officers are to use the rates when establishing prices for specific contracts. For their part, OCB officials believed that they were paying less than the local market rate for talent services.

Conclusions

Competition is a fundamental principle underlying the federal acquisition process, as it allows federal agencies to identify contractors who can meet their needs while allowing the government to rely on market forces to obtain fair and reasonable prices. The competition laws and regulations provide agencies considerable flexibility to use noncompetitive procedures, if adequately justified, to meet their needs and permit agencies to use less rigorous procedures for lower dollar acquisitions. In certain respects, however, IBB's and OCB's practices to award the

²³The handbook provides a specific rate range for each service it documents. For example, the acceptable pay for an in-studio program moderator, anchor, or host ranges from \$125 to \$500 for a program up to 30 minutes and between \$225 and \$800 for a program over 30 minutes. According to the handbook, these rates are approved by IBB for services acquired through competitive or noncompetitive processes.

contracts we reviewed lacked the discipline required to ensure transparency and accountability for its decisions with regard to these matters. IBB did not fully document information or assumptions underlying its decisions, involve its contracting office in a timely manner, or actively take steps to promote competition on future efforts. Similarly, OCB's practices do not fully adhere to the requirements established by IBB's handbook to document important steps in soliciting and awarding talent services contracts, in part due to questions about how to meet the handbook's requirements. Furthermore, the pricing guidance in the handbook may be of limited use as a tool to justify prices paid to talent services contractors. Collectively, these weaknesses underscore the need for IBB and OCB to improve their practices to enhance competition, improve transparency, and ensure accountability.

Recommendations for Executive Action

To better inform acquisition decisions, improve transparency, and ensure that competition is effectively utilized, we recommend that the Broadcasting Board of Governors direct IBB to take the following three actions:

- reinforce existing requirements to fully document information and assumptions supporting key decisions, such as when awarding contracts using other than full and open competition;
- reinforce existing policy for its programming staff to involve contracting personnel at the earliest possible time during the acquisition planning stage; and
- plan for full and open competition on any future contracts for radio and television broadcasting services that exceed the simplified acquisition threshold.

With respect to improving IBB's guidance governing contracts for talent services, we recommend that the Broadcasting Board of Governors direct IBB to take the following two actions:

- clarify requirements in IBB's *Contracting for Talent and Other Professional Services Handbook* on the receipt and evaluation of resumes and ensure that OCB's practices are consistent with IBB's guidance, and
- determine how the pricing guidance in IBB's handbook could better meet users' needs as part of its planned revision to the handbook.

Agency Comments and Our Evaluation

In written comments on a draft of this report, BBG did not formally comment on our recommendations. BBG subsequently informed us that it did not take exception to our recommendations and has begun to take steps to implement them.

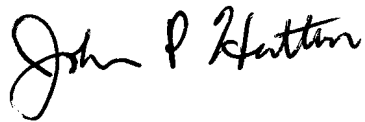
In its written comments, BBG expressed concern that the draft report title may be misconstrued as an evaluation of the overall fitness of the agency's contracting efforts. We modified the draft report title for additional clarity. BBG also noted that we did not have access to certain classified information, which BBG officials believed prevented them from fully illustrating the sense of urgency that surrounded their efforts to award the broadcasting contracts. We noted in the draft report that BBG was unable to provide documentation of certain classified aspects of the deliberations, but we did not question BBG's determination that there was an urgent and compelling need to award the broadcasting contracts. Rather, we noted that the agency failed to follow sound practices in such areas as documentation, stakeholder involvement, and planning for future competition, practices that are required by federal or agency acquisition regulations, and were not related to or dependent on BBG's disclosure of classified information.

BBG also provided additional context for the actions it took in awarding the broadcasting contracts and OCB's processes for awarding talent services. We believe the draft report reflected this information, but have, where appropriate, incorporated BBG's comments. These comments are reprinted in appendix II. BBG also provided technical comments, which we incorporated where appropriate.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 15 days from the report date. At that time, we will send copies of this report to interested congressional committees; the Broadcasting Board of Governors; the Executive Director, Broadcasting Board of Governors; the Director, Office of Cuba Broadcasting; the Secretary of State; and the Director, Office of Management and Budget. This report will also be made available to others on request. This report will be available at no charge on GAO's Web site at <http://www.gao.gov>.

If you or your staff have any questions about this report or need additional information, please contact me at (202) 512-4841 or huttonj@gao.gov. Contact points for our Office of Congressional Relations and Public Affairs may be found on the last page of this report. Staff acknowledgments are listed in appendix III.

Sincerely yours,

A handwritten signature in black ink that reads "John P. Hutton". The signature is written in a cursive style with a large, stylized initial "J".

John P. Hutton
Director
Acquisition and Sourcing Management

Appendix I: Scope and Methodology

Our objectives were to evaluate the processes used (1) by the International Broadcasting Bureau (IBB) to award the Radio Mambi and TV Azteca contracts, and (2) by the Office of Cuba Broadcasting (OCB) to award its talent services contracts. For the purposes of this review, talent services contracts refer to those contracts awarded by OCB for writers, performers, program hosts, reporters, and technical support required to produce and broadcast radio and TV news and entertainment programming.

To determine the laws and regulations governing the award of these contracts, we reviewed the Competition in Contracting Act, the Federal Acquisition Regulation, the Broadcasting Board of Governors' (BBG) Acquisition Regulations, and IBB's *Contracting for Talent and Other Professional Services Handbook*. Collectively, these provide guidance applicable to IBB and OCB on soliciting, evaluating, and awarding contracts above and below the simplified acquisition threshold of \$100,000. We also reviewed the Smith-Mundt Act, as amended, as well as the Radio Broadcasting to Cuba Act and the Television Broadcasting to Cuba Act to determine the authority by which OCB may broadcast radio and television programming to Cuba. We did not specifically assess whether the award and the terms and conditions of the broadcasting contracts were in compliance with these acts.

To evaluate the processes used by IBB to award the Radio Mambi and TV Azteca contracts, we reviewed the contract files to determine the information and assumptions supporting IBB's decisions leading to the award of the two contracts in December 2006. As both contracts were awarded using other than full and open competition, we reviewed IBB's justification and approval documents and other unclassified documentation supporting the solicitation process and award decision, including the July 2006 report of the Commission for Assistance to a Free Cuba. We also interviewed officials in IBB's offices of Marketing and Program Placement, Engineering, and Contracts, as well as officials from BBG's offices of General Counsel and Congressional Relations, to determine their roles and responsibilities to identify potential service providers and to negotiate and award the two contracts. Additionally, we interviewed the Director, OCB, and other senior OCB officials, as well as officials from the Department of State, to obtain information on their involvement with the award of these contracts.

To assess the processes used by OCB to award its talent services contracts, we compiled information from the Federal Procurement Data System-Next Generation on the contracts awarded by OCB from fiscal

years 2005 through 2007. This analysis identified 723 contracts or contract actions valued at over \$3,000 for various goods and services. We then selected a stratified random selection of 37 talent services contracts—examining at least 10 from each year—for a more in-depth review. Because of our sample size, the results of our analysis of these contracts can not be generalized to describe the process used to award all of OCB's contracts. Specifically, we reviewed the contract files to determine the extent to which the files contained documentation of the process used to solicit and evaluate resumes from potential talent services contractors. We also analyzed how the rates paid to the contractors compared against the rates recommended by IBB's handbook. We also interviewed OCB program managers and senior contracting officials to obtain insight into how OCB determined its requirements and selected talent services contractors. We interviewed senior IBB officials to obtain information on how IBB's handbook was developed and the procedures that OCB should follow when awarding talent services contracts. To provide context for OCB's contracting activities, we analyzed budget and financial data provided by BBG's Chief Financial Officer for fiscal year 2007 and verified our summary of the information using budget activities data provided by OCB's Director of Administration.

We conducted this performance audit from February 2008 through June 2008 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Comments from the Broadcasting Board of Governors

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



BROADCASTING BOARD OF GOVERNORS
UNITED STATES OF AMERICA

July 2, 2008

Mr. John P. Hutton
Director
Acquisition and Sourcing Management
United States Government Accountability Office

Dear Mr. Hutton:

The Broadcasting Board of Governors (BBG) appreciates the opportunity to comment on the GAO draft report, "Broadcasting to Cuba: Weaknesses in Contracting Practices Reduce Visibility Into Award Decisions," dated July 2008.

Limited Scope of the Draft Report

First, we would like to underline the narrow scope of the contract activities covered by the GAO's review and this draft report. Although the title of the draft GAO report implies weaknesses in a broad array of contracts related to broadcasting to Cuba, in fact the scope of the GAO's review was limited. The GAO's review examined two specific contracts of the International Broadcasting Bureau (IBB) with TV Azteca and Radio Mambi, two south Florida broadcasting stations. The U.S. sought the use of these broadcast assets to enhance TV and Radio Marti broadcasts at a time when the U.S. Government sought a surge in broadcast transmission during an expected transition in leadership in Cuba, and a possible time of political or economic turmoil. The GAO also reviewed a nongeneralizable, stratified random selection of 37 Office of Cuba Broadcasting (OCB) contracts for talent services.

The Radio Mambi and TV Azteca contracts are relatively small – with a combined total value of approximately \$1,069,451 (including options exercised at the time of GAO's review) – and a minor, specialized proportion of BBG's Headquarters' contract actions. Each of the 37 OCB contract actions was under \$100,000 and exclusively for talent services. GAO's review was for only a very small portion of the BBG's and OCB's total contracting efforts, which the report should reflect.

Instead, the title of GAO's draft report implies that all BBG contracts have inherent weaknesses. Given the narrow scope of the GAO's review, and the GAO's own qualification that its sample results were "nongeneralizable," we believe this misrepresents the overall fitness of agency contracting efforts.

Another limitation on the scope of the report, but that is not mentioned in the draft report, is that GAO did not have the benefit of reviewing classified materials in drawing its conclusions. The July 2006 report issued by the Commission for Assistance to a Free Cuba was classified.

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See comment 1.

See comment 2.

Additionally, all CAFC meetings were conducted as classified sessions, making any notes of those meetings or ensuing actions classified and unavailable for the GAO review.

Environment of Urgency

Second, we would like to underline the atmosphere of urgency in which the agency operated during the consideration of the two IBB contracts. The BBG was part of an inter-agency group charged with establishing agency responses to challenges that might arise during a possible transition of leadership in Cuba, given the news of President Castro's deteriorating health. In such a transition, the agency would be required to provide enhanced or alternative surge transmission to Cuba on an urgent basis. Given the classified nature of much of the inter-agency discussion, the BBG was not able to fully illustrate to GAO the sense of urgency that surrounded this contract effort, and which led the agency to pursue a sole-source contract in an "unusual and compelling urgency" environment.

While the Executive branch was anxious to have its planning and implementing contracts in place, the agency was also anxious to fully vet the issue of the unintended domestic dissemination that could occur, should the agency contract with broadcasters in south Florida that also reached a U.S. audience. Accordingly, as it planned to award the contracts, the agency also began consultations with the Congress to discuss the implications of new transmission out of south Florida on the ban on domestic dissemination in the Smith-Mundt Act. In doing so, we introduced a factor that would delay the contract implementation process. Without predictability on how long the Congressional consultation process would take, no new planning was instituted to reassess the decision to move on an unusual and compelling urgency basis.

Competition Issues

The GAO's draft report states that "IBB chose to exercise multiple options on the two contracts to extend their period of performance into 2008 and has only recently taken steps to identify additional providers." We would stress that conditions have not changed since 2002 when an IBB contractor first identified seven radio and TV stations as potential broadcasting partners for Radio and TV Marti. In 2006 when the agency was pursuing these contract actions, no additional frequencies were available and no radio frequency licensees had increased the output power to increase the reach of the stations' broadcasts when the agency reviewed available information on the FCC website. For the purposes for which IBB needed to contract with commercial broadcasters, there were no other providers.

GAO's draft report also states that IBB did not advertise the two large contract actions and that it exercised options without advertising for other sources. The agency recently published a synopsis for the television requirement in accordance with FAR Part 5.207(c).

Transmission Factors Under Consideration

The Administration's inter-agency policy coordination process charged the BBG with funding the transmission of TV Marti via satellite TV into Cuba by the most effective means possible, including U.S. DirecTV. BBG attempted to contract directly with DirecTV. However, DirecTV contracts with terrestrial based television stations to carry full programming as it is broadcast from those stations.

See comment 2.

See comment 3.

See comment 4.

The BBG then learned that Cubans have access to decoder boxes and service from the Miami area. In discussions with DirecTV, BBG found that only local terrestrial Miami satellite TV stations (using the south Florida DirecTV feed) could be viewed using the decoder equipment available to Cuban audiences. Consequently, South Florida was a logical choice for the BBG to seek an appropriate commercial station.

Because all stations on the DirecTV beam are of equal strength, a station with a) Spanish-language programming; and b) a small terrestrial (Miami-local) coverage area was considered to be most appropriate from a cost standpoint and to minimize inadvertent domestic dissemination in accordance with the Smith-Mundt Act. That Act expressly authorizes the BBG to use television broadcasting to Cuba notwithstanding the domestic dissemination ban in section 501 of the Smith-Mundt Act “to the extent that such dissemination is inadvertent.” Spanish-language stations were desired because Cubans would be more likely to listen and understand a Spanish-language station. All small, low-power UHF terrestrial outlets, including several not affiliated with any network, were contacted, reviewed, and considered for a TV affiliate contract. All of these stations broadcast their programs in Spanish and were carried on the DirecTV beam giving BBG access to the DirecTV target audience in Cuba. The BBG determined that TV Azteca was the best overall value to the government (factoring the broadcast schedule times and surrounding programming as well as cost) while having the smallest domestic footprint, which would limit the extent of inadvertent domestic dissemination more than the other stations.

For radio, the agency sought optimum nighttime propagation when OCB’s planned broadcasts would occur. Independent analysis determined that only one commercial radio station in south Florida operated with 50kW at night – WAQI, Radio Mambi. (Other stations are required by FCC to reduce output to a low wattage at night.) This station operating at 710 kHz with superior antenna design (e.g., unidirectional) and orientation could reach almost the whole island. Additionally, it was an attractive choice because its wide beam is harder to totally jam than a more focused beam directed at Havana. This was the only station available with enough power to blanket the island at night. From reach and frequency considerations, WAQI was the only available station that met the BBG’s broadcast requirements.

BBG did not use full and open competition initially (e.g., including synopsis in the Federal Business Opportunities (FBO, FedBizOps) for primarily two reasons: (1) the agency did not have Congressional concurrence regarding inadvertent domestic dissemination issues inherent in contracting with Miami based commercial stations; and (2) given the long history of Cuban jamming of OCB broadcasts, BBG did not want to announce procurements that would provide Cuba advance notice of the agency’s planning, and thus allow it to jam programming more readily. Competition was done to the maximum extent practicable with TV and radio stations BBG identified as meeting the agency’s minimum requirements. If a traditional FBO notice had been issued, it very likely would not have changed the final contract awardees while giving Cuba the chance to jam the new broadcasts.

The jamming issue was important in this situation. The use of a new frequency provides the BBG with an opportunity to defeat the jamming – even if only temporarily. A notice in the FBO could have made the Cuban government aware of the U.S. government’s new broadcast intentions, and allowed it to prepare an immediate response (such as having additional jamming equipment in place).

See comment 5.

OCB Contracts for Talent Services

The GAO also examined the Office of Cuba Broadcasting's processes for selecting its talent services contractors, and found that "OCB met solicitation requirements by issuing quarterly announcements in *Federal Business Opportunities* in addition to advertising annually in a local newspaper and posting announcements at OCB's headquarters. OCB does not require, however, that managers document instances in which resumes were received from sources outside the formal solicitation process."

We would like to note that quarterly Federal Business Opportunities notices are generally open for responses for the entire quarter during which they are issued. For example, the third quarter 2008 notice was posted on March 31, 2008, and open for responses to June 30, 2008. The prior notice was posted on December 26, 2007 and open for responses until March 31, 2008. In effect, this provides for an active "sources sought" notice throughout the year.

The annual Miami Herald advertisement does not have a cut-off date for resumes and the public notices posted in the building are always active. Therefore, there is a continuous open announcement process for talent vendors at OCB through these three venues. All resumes are to be reviewed in the OCB Contracting Office, added to a source list, and referred to the applicable OCB program area.

The GAO draft report also states, "For example, some managers indicated that they always reviewed the resumes obtained through OCB's formal solicitations when selecting a contractor, though none documented their assessments. On the other hand, three managers indicated that they have selected contractors based on the recommendation of an OCB employee without reviewing other resumes."

Last year OCB received over 600 resumes in response to its notices. The resumes were distributed to OCB program managers by OCB's contracting office with specific instructions to consider the resumes when making contractor recommendations for the coming quarter. If individual managers indicated that they did not consider the resumes, then they were not acting in accordance with guidance. OCB management and IBB senior contracting officials will ensure this situation is corrected.

OCB has already issued guidance that, if someone outside the Contracting Office receives resumes, he/she must give them to the Contracting Office that uses one consistent process to refer resumes to the program offices for review and evaluation. The program officials are to maintain a list of candidates to consider for each contract requirement. In each case, a resume used to support a manager's recommendation for a contractor must go through the same procurement process, with full justification provided. The OCB Contracting Office will ensure that all resumes are being properly referred through the Contracting Office for consideration.

The GAO draft report also notes that the talent contract files documented the rationale for selecting the contractor, but did not provide documentation to indicate that other potential contractors were considered. GAO concluded that "OCB requires managers only to document their recommendations for service providers for contract award." GAO also relates that OCB contracting officials discussed the documentation requirements in the handbook as an issue. Specifically, the draft report states, "The *Contracting for Talent and Other Professional Services*

Appendix II: Comments from the
Broadcasting Board of Governors


5

Handbook requires, however, that contracting personnel maintain contract files, which must contain a justification for the contractor selected along with an evaluation of prospective contractors. OCB contracting officials told us that it was not clear to them how best to meet this requirement.”

OCB contracting officials indicate that they did not mean that it was not clear “how best to meet this requirement,” but rather that the guidance in the handbook was not clear. The handbook states that the files should contain “*records relating to evaluation of prospective contractors including justification for selection of proposed contractor.*” The justification for selection of the proposed contractor is in all files, and was in all 37 contract files reviewed by GAO, as the GAO acknowledges. However, OCB is not clear on the proper documentation to meet “*records relating to evaluation of prospective contractors.*” OCB has indicated that, beginning in FY 2009, it intends to require documentation in the files showing that at least two other sources were reviewed, and a written explanation of why they were not selected. The IBB Office of Contracts is working with OCB management on how to document the files.

We appreciate the opportunity to work with the GAO to clarify the context of the contract operations that they reviewed. As noted above, we have already begun to address several weaknesses identified by the GAO, and to ensure more exacting implementation of proper procedures in contracting for talent services at OCB.

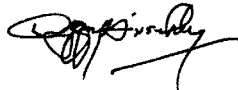
Sincerely,



Joaquin Blaya
Member



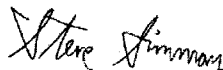
Blanquita Cullum
Member



D. Jeffrey Hirschberg
Member



Edward E. Kaufman
Member



Steven J. Simmons
Member

The following are GAO's comments on the Broadcasting Board of Governors' letter dated July 2, 2008.

GAO Comments

1. As noted by BBG, the draft report provided to BBG correctly characterized the scope of GAO's review. In that regard, we reviewed two broadcasting contracts awarded by IBB on behalf of OCB. Similarly, the draft report noted that the results of our analysis of OCB's talent contracts are not generalizable to the processes used by OCB to award all of its contracts. Our work, however, does provide a sound basis for discussing OCB's processes for awarding its talent services contracts, which are essential for providing the on-air talent, writers, and technical support services needed to produce and broadcast its programming. We modified the draft report title for additional clarity.
2. We noted in the draft report that BBG was unable to provide documentation of certain classified aspects of deliberations involving several agencies, including the National Security Council and the Departments of Defense and State. BBG officials stated that they were not authorized to disclose this information. As a result, BBG officials expressed concern that they were unable to fully illustrate the sense of urgency that surrounded their contracting efforts. We do not see this as a limitation to our scope, however, as we did not question BBG's determination that there was an urgent and compelling need to award the broadcasting contracts. Rather, we noted that the agency failed to follow sound practices in such areas as documentation, stakeholder involvement, and planning for future competition, which are required by federal or agency acquisition regulations, and are not related to or dependent on BBG's disclosure of classified information. We also note that the July 2006 report by the Commission for Assistance to a Free Cuba is unclassified and publicly available on the Commission's Web site.
3. We believe the draft report appropriately reflected the context and process used by IBB to identify and award the radio and television broadcasting contracts. We do note, however, that the contract files do not make reference to the 2002 engineering study; rather, IBB officials provided that information during the course of our review to supplement the information in the files. We also note that the 2002 engineering report discussed only radio stations, and not television stations. In that regard, we found that OCB identified four local Miami television stations carried on DirecTV for IBB's consideration in August 2006.

4. We stated in the draft report that as an interim measure to conducting a full and open competition, on April 25, 2008, agency officials advertised in *Federal Business Opportunities* their intention to exercise the final option with TV Azteca to extend contract services into December 2008. We note, however, that agency officials had not taken any action in this regard until we brought it to their attention during the course of our review that they were not in compliance with the notice requirements prescribed by the Federal Acquisition Regulation.
5. We believe the draft report appropriately reflected the context and process used by IBB to identify and award the radio and television broadcasting contracts. As the draft report noted, however, IBB did not document in its contract files key information or assumptions underlying its decision not to seek competitive offers, to limit the number of potential providers it considered, and to limit the basis used to negotiate final prices for the services provided. In these cases, IBB officials supplemented the information contained in the contract files by providing information and e-mails from their personal files. We do note that BBG's description of TV Azteca as the best overall value to the government (factoring the broadcast schedule times, surrounding programming, as well as cost) is somewhat inconsistent with the information contained in the contract files and subsequently provided by IBB. Our review found that TV Azteca was the only television station with a feasible offer after a preferred station withdrew its offer, and thus became the basis for IBB's determination that only one responsible source could meet its needs.

Appendix III: GAO Contact and Staff Acknowledgments

GAO Contact

John P. Hutton, (202) 512-4841 or huttonj@gao.gov

Acknowledgments

In addition to the contact above, Timothy J. DiNapoli, Assistant Director; Katherine Trimble; Justin Jaynes; Leigh Ann Nally; Julia Kennon; and John Krump made key contributions to this report.

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