UNITED STATES DEPARTMENT OF COMMERCE
The Inspector General
Washington, D.C. 20230

January 10, 2012

MEMORANDUM FOR: Lawrence E. Strickling
Assistant Secretary for Communications and Information
National Telecommunications and Information Administration

FROM: Todd J. Zinser

SUBJECT: Misrepresentations Regarding Project Readiness, Governance Structure Put at Risk the Success of the San Francisco Bay Area Wireless Enhanced Broadband (BayWEB) Project

By letter dated November 1, 2010, the County Executive of Santa Clara County, California, requested an investigation of the nearly $50.6 million Broadband Technology Opportunities Program (BTOP)[1] grant awarded to Motorola Solutions, Inc. (formerly Motorola, Inc.; hereinafter Motorola) for the project known as the San Francisco Bay Area Wireless Enhanced Broadband (BayWEB). The letter claimed that the application contained misrepresentations and misinformation—and that the selection of Motorola as a grant applicant represented a conflict of interest. Allegations regarding the award had been previously sent to NTIA in September 2010, before the award was accepted by Motorola.

In December 2010, we initiated a review of NTIA's response to concerns expressed on the project. Our May 6, 2011, report on NTIA's handling of the complaint contained recommendations for improving NTIA's procedures for handling complaints. Our report also noted that we would undertake further review of the complaint to examine issues that were outside the scope of our initial review—and that NTIA declined to investigate further, because they viewed these issues as exceeding the scope of its program responsibilities.

Our follow-on review identified several areas of concern regarding the award to Motorola that revealed misrepresentations in the application and deficiencies in the due diligence—and also highlighted ongoing challenges facing the administration of BTOP. Specifically, the application, not attributable directly to the grantee in this case, misrepresented information regarding the status of a regional governance structure, the readiness of sites for broadband infrastructure, and the region's authority to use the dedicated broadband spectrum. Although these concerns may not mandate termination of the grant, they have contributed to delays in the project that put at risk the successful completion of the project and the fulfillment of the grant's purpose. The lessons learned will benefit not only the administration of current BTOP grants but also any subsequent grant programs that NTIA or other Commerce bureaus may administer.

[1] BTOP is a competitive grant program intended to provide funds for deploying broadband infrastructure in the United States, enhancing broadband capacity at public computer centers, improving access to broadband services for public safety agencies, and promoting sustainable broadband adoption projects.

cc: Scott Quehl, Chief Financial Officer and Assistant Secretary for Administration
Angela Simpson, Acting Chief of Staff and Senior Advisor for Broadband, NTIA
Kathy Smith, Chief Counsel, NTIA
Anthony Wilhelm, Deputy Associate Administrator, Infrastructure Division, Office of Telecommunications and Information Applications, NTIA
Aimee Meacham, Compliance Officer, NTIA
Milton Brown, Audit Liaison, NTIA

Background

On February 17, 2009, the President signed into law the American Recovery and Reinvestment Act of 2009 (the Recovery Act), which gave NTIA $4.7 billion to establish BTOP. NTIA awarded $3.9 billion—through approximately 230 BTOP grants—to deploy broadband for infrastructure, public computer centers, and sustainable broadband adoption projects. Public entities, for-profits, nonprofits, cooperative associations, and tribal entities were eligible to receive BTOP awards. One award, for approximately $50.6 million, went to Motorola for implementation of the BayWEB program through a public–private partnership with San Francisco Bay Area public safety entities. Efforts to build a public safety and public access broadband network are currently underway, although they are significantly delayed.

The Project Has Faced Challenges from Its Inception, Due in Part to Time Limitations

The second round of BTOP grants, which included the award to Motorola, involved a shortened application and review period. Pursuant to provisions of the Recovery Act, the process was initiated with the January 2010 issuance of a Notice of Funds Availability, with grant applications due by March 15, 2010 (later extended to March 26, 2010). Award notifications were made between June 2010 and September 2010, and final acceptance of awards had to be completed by September 30, 2010. This shortened application and review period introduced an element of heightened time sensitivity that presented a challenge not only to applicants but also to NTIA's grant administrators; NTIA received more than 880 applications during the second round.

In preparing its application under these time constraints, Motorola depended heavily on staff employed by the Bay Area Urban Area Security Initiative (Bay Area UASI). Among other things, Bay Area UASI staff obtained letters of support, identified tower sites for project infrastructure, and coordinated the Federal Communications Commission (FCC) application to allow for use of the spectrum. Motorola explained that they relied upon this information in preparing the application. Similarly, NTIA had a limited time to review the application and perform due diligence before making the award. As we noted in our April 2010 report *NTIA Must Continue to Improve Its Program Management and Pre-Award Process for its Broadband Grants Program*, BTOP was a new program and NTIA therefore was required to establish, within an unusually short period, many of its procedures and processes for pre- and post-award review. NTIA followed an application process that involved a peer review of applications and the performance of due diligence, including follow-up on questions arising from the application.

The BayWEB project is a public–private partnership between Motorola and public entities throughout the Bay Area to build a 700 megahertz (MHz) interoperable wireless public safety broadband network and a public access wireless broadband network. The proposed project is to deploy the network at approximately 200 unique radio sites across the Bay Area's 7,368 square miles. Stakeholders expect the public safety component of the system to improve and enhance the regional interoperability of public safety communications to allow real-time exchange of mission-critical information via voice, text, and video among first responders and off-site supervisors and dispatchers.

Because preliminary work, including execution of two agreements essential to the project, was not completed prior to submission of the application, the project has yet to "break ground." Since the award of the grant, the region and NTIA have expended significant efforts to create the governance structure portrayed as already existing in the application. That governance structure, the Bay Area Regional Interoperability Communications Systems (BayRICS) Joint Powers Authority (JPA), held its first official meeting on August 8, 2011—nearly a year and a half after the submission of the application. Notably, the JPA cited this accomplishment, among other items, in a recent letter to NTIA, which served to highlight the contrast between what was represented in the application and what was in place in reality. The JPA is continuing to negotiate with Motorola regarding the terms of a Build, Own, Operate, and Maintain (BOOM) agreement, estimated in September 2010 by Motorola to be completed within 2 months, needed to implement BayWEB. However, because the JPA had not been formed and BOOM agreement negotiations were still in a preliminary phase, NTIA's March 2011 site visit report set a deadline of July 1, 2011 for execution of the BOOM agreement. In addition, access to the spectrum, without which there can be no project, remains an open issue. Access is accomplished by signing a lease with the organization designated by the FCC as the spectrum lessee, which has not yet been granted. According to the terms of the grant, the project must be completed by July 31, 2013.

Concerns with BayWEB Project Raised by San Jose and Santa Clara

- Governance
- Project readiness
- Authority for actions taken
- Vendor selection
- Letters of support

Local Government Officials Voiced Concerns to NTIA and OIG After the Grant Was Awarded, Leading to an OIG Review and Report.

Facing this tight schedule, Motorola submitted its application to NTIA on March 26, 2010. The grants officer signed the award document on August 13, 2010. On September 8, 2010, shortly before Motorola accepted the grant by signing the award document on September 16, the Mayor of San Jose and County Executive of Santa Clara requested suspension or postponement of the award until concerns regarding the procurement and vendor selection process had been answered. On October 1, 2010, the Director of BTOP responded to Santa Clara and San Jose by stating that NTIA had no reason to question the recipient's ability or intent to execute the project in accordance with the grant terms. On November 1, 2010, the Santa Clara County Executive requested that OIG investigate the award; we began our review in December 2010. Over the next several months, San Jose and Santa Clara sent additional correspondence to NTIA detailing their concerns with the award and addressing NTIA's responses to those concerns.

Our May 6, 2011, report on the BayWEB project, which included an examination of NTIA's documentation, identified the following deficiencies:

- insufficient research into complaints,
- inadequate communication between the program office and the grants office,
- inadequate policies and procedures for handling complaints, and

- the lack of a complaint review process that is independent of the program office that awarded and administered the grant.

Also, the report made recommendations to NTIA regarding suggested improvements to its processing of third-party requests.

As part of our follow-up evaluation of the claims made by San Jose and Santa Clara, we met or spoke with current and former Bay Area officials including officials from the City of Oakland and the City of San Francisco, representatives of Motorola, and personnel within the BTOP Federal Program Office. We also reviewed documentation associated with the application and award, project-related documents, and documents pertaining to the efforts at forming the JPA. The results of our evaluation are detailed in the remainder of this memorandum.

Findings

Defects in the Application That NTIA's Due Diligence Process Did Not Detect Have Caused Delays That Put the BayWEB Project at Risk

The application and review process of the BayWEB award suffered from several deficiencies that have put at risk the timely completion of the project and, ultimately, the achievement of the grant's goals. The application itself contained unclear, incomplete, or misleading statements which, left unaddressed by the grant management staff during the due diligence phase, have caused delays in the progress of the project. These statements include significant misrepresentations regarding (1) the existence of a regional governance structure, (2) the readiness of specific sites for the installation of broadband infrastructure, and (3) the authority of the region to access the broadband spectrum. In addition to these misrepresentations, the application process—as well as subsequent efforts to accomplish the project's goals—was hindered by an opaque and noninclusive vendor selection process employed by Bay Area UASI. Additional delays and regional strife have been caused or exacerbated by reliance on nonspecific letters of support from regional stakeholders.

The Governance Structure as Presented in the Application Did Not Exist

The UASI is a federal program created in 2003 by the U.S. Department of Homeland Security to provide federal grants to support the planning, equipment, and training and exercise needs of high-threat, high-density urban areas around the country. UASI grants have been used to increase the ability of first responders in urban areas to respond to a multitude of emergencies. BayRICS was established by the 10 Bay Area counties and 3 core cities (San Francisco, Oakland, and San Jose) in 2006 through the creation of a strategic plan with the goal of providing voice and data interoperability throughout the Bay Area. Santa Clara County and the City of San Jose alleged, and our evaluation confirmed, that an entity representing BayRICS, the BayRICS Policy Group, was never formally selected or appointed, directly or indirectly, as the governing body for BayWEB—nor had the group officially formed or developed a governance structure prior to the summer of 2010. Consequently, and most significantly, the BayRICS Policy Group did not have authority to bind any public entities to agreements regarding the new network's rights and responsibilities or commit the jurisdictions to decisions regarding design, deployment, ownership, operation, or maintenance of a public safety broadband network.

During our review, we found representations about the BayRICS Policy Group were generally made in three documents: (1) the cooperative agreement between the Alameda County Sheriff and Motorola, (2) Motorola's BayWEB application, and (3) supplemental information request responses provided by Motorola to NTIA during the agency's pre-award due diligence.

The Alameda County Sheriff's Office, acting on behalf of the BayRICS Policy Group, and Motorola entered into an agreement on March 15, 2010. While the agreement was contingent upon a successful grant application, it made representations about the BayRICS Policy Group such as:

> "The Sheriff will facilitate, through the BayRICS Policy Group, site access and continuous use of a minimum of 150 'shovel ready' sites (as agreed by the parties) that are owned or leased by the BayRICS participants within the ten (10) county San Francisco Bay Area region so that Motorola may install Network and Ancillary Systems equipment at these agreed sites."

Motorola's application, submitted to NTIA on March 26, 2010, made several representations about the BayRICS Policy Group, including:

> "The Public Safety subsystem will operate on 700 MHz frequencies and requires FCC approval, which has been requested by the BayRICS Policy Group."

Subsequently, Motorola submitted responses to NTIA's supplemental information request, including the following representation about the BayRICS Policy Group:

> "Finally, the BayRICS Policy Group provides advice to the Executive Sponsor, Alameda County Sheriff's Department, on how the Bay Area region might best use cost effective and cutting edge communications technology to become a recognized leader in providing public safety services desired by citizens, businesses, and government organizations."

In our May 2011 review of documentation related to the preparation and submission of the grant application, we found that Bay Area UASI staff believed that there would be time between the submission and the award announcement to finalize other details of the partnership. In that time, the team would focus on setting up the BayRICS Policy Group and reviewing a proposed governance agreement and bylaws.

BayRICS Policy Group meeting minutes indicate that the first meeting did not occur until July 7, 2010, approximately 3 months after Motorola submitted the BayWEB application and only a few weeks after it provided supplemental information during due diligence. As such—contrary to representations made throughout various documents submitted in support of the BayWEB application—evidence does not demonstrate that a functioning governance entity existed at the time the application was submitted.

The current state of affairs stands in stark contrast to the representations in the application. On August 8, 2011, the Board of Directors for the BayWEB governance entity—the Bay RICS JPA—met for the first time, nearly a year after NTIA made the award. During this meeting, the

Board ratified the establishment and membership of the Technical Advisory Group (TAG), which is responsible for supporting the JPA by assisting in the BOOM negotiations with Motorola for BayWEB. According to a September 2010 communication with NTIA, Motorola estimated that the BOOM agreement would be executed in approximately 2 months from that time. Then—with the JPA not yet formed and the BOOM agreement still not executed—NTIA, after a March 2011 site visit, set a deadline of July 1, 2011, for execution of the BOOM agreement. However, due to delays in forming the JPA and negotiations of terms, the agreement has not been signed as of the date of this memorandum. The project has been delayed as the grantee and local officials attempt to remedy this deficiency. The length of time required to reach these milestones indicates that what the grant application portrayed as a strength of this project—the purported existence of a governance body—was in fact a potential risk requiring significant time and effort to address.

The Application Misrepresented the Degree of Project Readiness

Santa Clara and San Jose also raised concerns about the readiness of some of the sites to be used as part of the BayWEB project. According to Santa Clara and San Jose, considerable expenditures would be needed to make the sites listed in the grant application suitable for the project.

The BayWEB application touted the project's "shovel readiness" no fewer than four times, making clear an expected advantage from leveraging existing sites. The use of existing sites (all of which—according to the application—were themselves "shovel ready") would allow the project to be "deployed in an efficient and cost-effective manner." The application's reference to "shovel readiness" conveyed a level of preparedness portrayed as advantageous, especially given the short time frame to execute the grant-funded project.

Although the term "shovel ready" is widely used throughout Recovery Act programs, the Recovery Act and the Notice of Funds Availability for BTOP's first and second funding rounds do not include or define the term. As part of our review, we asked interviewees to define the term. The responses varied greatly and reinforced the notion that a single definition did not—and likely still does not—exist.

NTIA's initial review of the application yielded a question on the environmental technical feasibility of the proposed project that elicited additional information regarding the readiness of the project. The response, technically from Motorola but also reflecting the position of UASI, stated unequivocally that:

> "The BayWEB project will use existing infrastructure—including established radio sites, towers, and equipment rooms—there is no need to construct new buildings or other structures, renovate existing structures, or otherwise disturb any property."

However, our evaluation made clear that Bay Area UASI performed insufficient due diligence—prior to the application's submission and in a supplemental request—to confirm that the proposed sites were uniform in condition and required no construction or renovation. Yet such assertions were made in the original application and in response to NTIA's follow-up questions.

We were told by Bay Area officials involved in collecting information for the application that, during the drafting of the application, Bay Area UASI staff collected lists of available sites from a prior, unrelated request for information (RFI). In order to supplement and update the information from the RFI, Bay Area UASI sent an informal email questionnaire to the Bay Area jurisdictions. In response to that questionnaire, one jurisdiction emphasized that the suggested sites were:

> "only 'Potential Sites for consideration and will require further vendor analysis and discussion with the site owner for approved use,' [because] . . . almost all sites listed . . . have site and backhaul limitations that most likely will limit their usefulness as potential sites for RCS and/or broadband use, and they could require some level of construction and equipment expansion to resolve existing limitations."

Further, after the award of the grant, with respect to another jurisdiction, Bay Area UASI staff acknowledged that "[t]he sites originally designated as Contra Costa sites in the BTOP application are, for the most part, not viable due to location or lack of backhaul."

In contrast to the depiction of site readiness in the application and responses to follow-up questions, Motorola and its project partners have identified significant site remediation costs. Although the allocation of these costs has apparently been resolved among the parties, this process has resulted in trade-offs and potential changes to the project budget, including an increase in the overall project cost, that were not anticipated.

The Application Misrepresented the Project's Authority to Use the Broadband Spectrum

In addition to the misrepresentations about its formation and status, the application also misrepresented the BayRICS Policy Group's authority and involvement in requesting a key waiver needed for the project.

An essential element of the BayWEB project is the use of the public safety broadband spectrum found in the 700 MHz spectrum that is regulated by the FCC. As the application explained, entities would require approval from the FCC to use frequencies in this spectrum, with temporary access made possible through a lease agreement with the Public Safety Spectrum Trust (PSST), a nonprofit organization designated by the FCC as the lessee of this spectrum. Bay Area jurisdictions, specifically the City and County of San Francisco and the Cities of Oakland and San Jose, applied to the FCC for this waiver in 2009. In 2010, as part of the preparation of the BTOP grant application, the Sheriff of Alameda County entered into a lease agreement with the PSST on behalf of the region. This lease was a temporary grant of authority to use the spectrum pending further action from the FCC.

The Sheriff of Alameda County's authority to sign the lease agreement on behalf of the three cities was questioned by the Mayor of San Jose in a January 2011 letter to the FCC. On February 11, 2011, the FCC requested a response to these allegations from the Sheriff, among others. In response to the FCC's letter, in April 2011 the mayors of the three waiver applicant cities requested that the cities be substituted as parties to the spectrum lease in place of the Sheriff. However, the FCC declined to permit the cities to remedy the Sheriff's apparent lack of

authority in this manner. The letter stated that the lease would not be valid and thus could not be transferred or assigned if the Sheriff of Alameda County lacked signatory authority.

OIG has monitored the development of this issue, which is critical to the achievement of the grant's goals. At this time, members of the JPA have formulated plans to obtain the use of the spectrum, but this issue remains unresolved and requires favorable action from the FCC.

We reviewed the BayWEB application to understand the assertions made regarding the use of the 700 MHz spectrum. We found that the application presented the authority to use the spectrum as certain and that NTIA's pre-award due diligence did not uncover the lack of a formal authorization for the Sheriff to enter into the lease. These two events led NTIA and the grantee to operate under the assumption that the use of the spectrum would not be in question. Instead, since this deficiency was not discovered until after the grant was awarded, the grantee and local governmental entities must work diligently with the FCC to obtain authority while attempting to implement the overall project. Earlier discovery of this issue could have resulted in more prompt and favorable resolution.

According to the application:

- The BayWEB public safety subsystem (the grant application explained that the network would include a public safety subsystem as well as a public access subsystem for community anchor institutions and residents) would operate on 700 MHz frequencies and require FCC approval, requested by the BayRICS Policy Group.

- In May 2009, representatives from the BayRICS Policy Group submitted a waiver request for FCC approval to use that portion of spectrum.

- If FCC action on the waiver was delayed, Motorola and the BayRICS Policy Group would secure operating authority through the FCC's special temporary authority process pending final regulatory approval.

Contrary to the statements made in the application, on May 27, 2009, it was not the BayRICS Policy Group, but the City and County of San Francisco, the City of Oakland, and the City of San Jose—as members of the Bay Area UASI—that filed an amended request for waiver of FCC rules to allow the Bay Area cities to use the public safety broadband spectrum in the 700 MHz band to deploy a regional, mobile, interoperable public safety broadband network. The petition does not purport to be on behalf of the BayRICS Policy Group, although it does refer to the region many times in the narrative.

In June 2010, as part of the pre-award due diligence process, the cities of San Francisco and Oakland submitted separate letters to NTIA indicating the cities would authorize the Alameda County Sheriff's Office to enter into the requisite lease agreement if certain conditions were met. The City of San Jose submitted a similar letter that did not identify the signatory for the lease but stated that it would negotiate in good faith to enter into a lease agreement. However, localities claimed that the necessary conditions were not met. Two months later, the PSST entered into an agreement termed a "long-term de facto transfer spectrum lease" with the

Alameda County Sheriff's Office—which had not notified the cities first and had not made certain these conditions had been met—on behalf of the San Francisco Bay Area Urban Area region for use of the 700 MHz spectrum.

According to the Sheriff's Office, the PSST Chairman requested that a single signatory execute the lease on behalf of the cities. As the Executive Sponsor of the BayWEB project, the Sheriff consulted with Bay Area UASI staff and decided reasonably that, as Regional Mutual Aid Coordinator for Region 2, he was as well-positioned as any other individual in the region to sign the application on behalf of the region.

NTIA inquired about the Sheriff's authority to sign the lease during pre-award due diligence, and the three cities subsequently expressed their intent to work in good faith to negotiate a lease. However, NTIA did not verify formal authorization was granted by the cities before moving forward with its award decision.

The absence of a formal authorization for the Sheriff or any other individual to execute the lease agreement remains an obstacle to completing the project. The project cannot proceed as planned without the use of the spectrum, which the grant application presented as a certainty. Attempting to resolve these issues now that the project period is well underway puts the project at risk of not meeting its primary goals.

Bay Area UASI Employed a Vendor Selection Process That Caused Confusion and Hindered the Execution of the Project

Bay Area UASI staff decided that selecting a private entity to apply for the BTOP grant, with participation from the local governmental entities, would be a good model for the region's proposal. This kind of partnering was permitted and in fact encouraged by NTIA. In order to implement their vision for a public–private partnership, Bay Area UASI staff undertook certain vendor selection actions in preparation for the BTOP grant application that were later the subject of Santa Clara and San Jose complaints.

On February 1, 2010, Bay Area UASI staff issued a request for proposals (RFP) for the BayWEB project. This RFP, which was sent to entities that responded to a prior request for information (RFI), sought proposals for partnerships to build out a 700MHz public safety broadband network.[2] This RFP was not, however, made publicly available.

Prompted by a request from the Bay Area UASI general manager, who had received complaints about the selection process, the California Emergency Management Agency (CalEMA) issued a report on the procurement process used to select Motorola. On October 14, 2010, CalEMA concluded that the local process used to select Motorola and subsequently enter into a cooperative agreement did not violate any federal requirements.

[2] On September 29, 2009, San Francisco, Oakland, and San Jose, on behalf of the Bay Area UASI Interoperable Team, had issued an RFI to assess potential approaches and the costs associated with the deployment of a region-wide 700 MHz broadband network. Based on this RFI, the Bay Area UASI planned to proceed with pilot projects, collectively referred to as Project Cornerstone, in the core cities.

We found that the review was narrowly scoped and focused on definitional questions and the level of diligence that Bay Area UASI staff performed before entering into an agreement with Motorola to partner for BTOP. The review did not dispel concerns about the process on the part of certain jurisdictions involved in the project.

The selection of Motorola as the private partner for this grant project was not made under the auspices of the federal grant. Further, it was not subject to the federal regulations that apply to procurements and other activity that grantees may conduct after an award has been made. However, because of the concerns raised, we conducted a review of the relevant documents and spoke with key officials involved in the process to determine how the grant applicant was selected at the local level. Attorneys for the City of San Francisco confirmed that UASI had sought legal advice from San Francisco regarding the vendor selection process. The San Francisco City Attorney's Office stated that, because the selection of the BTOP application vendor/partner did not involve an immediate expenditure of city funds, the procurement provisions in the San Francisco city code did not apply. That the BTOP grant, if awarded to Motorola, would potentially involve expenditure of city funds—for user devices, roaming charges, and other fees—was neither presented to nor researched by the San Francisco attorney.

This narrowly-cabined approach to the question did not take into account the fiscal and legal commitments that the local entities would be expected to incur if the application was successful. For instance, the local entities will pay Motorola for service in using the system. At the same time, we do not question the City Attorney Office's conclusion that the initial selection of Motorola as the private partner did not require a competitive process. However, this selection led to commitments downstream that have understandably been perceived as noncompetitive or sole-source commitments to a private firm. This perception arose in part from the fact that some key players in the project had ties to Motorola. Although the process did not appear to provide ideal conditions for a fully open and competitive selection, we also did not find evidence of overt favoritism or clear personal conflicts of interest.

The problem, however, was largely one of perception that was not managed effectively by UASI staff. While the resulting process was not strictly a sole-source arrangement, the RFP did not necessarily result in full and open competition because of its limited distribution. Furthermore, its informal e-mail format lacked the appearance of official sanction and authority. Greater transparency and more open competition would likely have avoided the lingering concerns about the selection process.

In turn, NTIA and other Commerce bureaus should consider the complex issues and problems that may arise when grant applicants are encouraged to partner with other entities without a clearly-imposed structure and roles. At the very least, NTIA should be alert to these type of issues in other grants that entail public–private partnerships.

Degree of Reliance on Letters of Support—by Both the Applicant and NTIA—Contributed to the Deficiencies in the Application Process

In evaluating the award to Motorola, NTIA relied on letters of support from organizations and governmental entities within the Bay Area that would receive the benefits of a

telecommunications project to strengthen public safety. One merit reviewer noted "very strong" support and cited endorsements from political entities. Also, in its response to San Jose and Santa Clara's concerns with the awards, NTIA cited the letters of support to demonstrate the project's continuing validity. San Jose and Santa Clara stated that they provided letters of support to assist in the overall goal and concept of the project but were informed that further crucial information would be forthcoming. Without such information, these jurisdictions were not willing to endorse the process that was followed to obtain the grant. These conflicting views of the letters of support highlight the difficulty in assessing and assigning weight to such expressions of support in the grant award process.

We found the letters of limited value, as they did not represent firm political or fiscal commitments to the project. Instead, they offered general approval of BTOP awards and what they represented for local public safety stakeholders.

In our interviews, conducted with 21 individuals who provided letters supporting the project, we found that they were often not given significant information about the project. Moreover, the interviews revealed a general theme of letters indicating support for the concept of enhancing public safety in the region rather than endorsement of a particular technological approach or choice of vendors. Because of the general nature of the support conveyed, the letter writers understandably conducted little or no due diligence prior to submitting their letters.

While such support may provide some indication that the project serves a laudable public purpose, it does not establish political or fiscal support. Despite the generic and nonbinding nature of the letters, NTIA relied upon them in recommending to the Assistant Secretary that the grant be awarded—and then later in dismissing some of the concerns cited in letters from the City of San Jose and the County of Santa Clara.

As the project has progressed and cost estimates have emerged, some localities that issued support letters expressed reservations about the extent of their continued participation in the project, if any. Apportionment of costs, including roaming fees and site remediation, has become a critical point of contention in the BOOM negotiations. A vote on the BOOM agreement is scheduled for January 19, 2012.

Conclusion

Our review found several flaws in both the application submitted to NTIA and the process by which the application was prepared. Subsequent efforts by the grantee, local stakeholders, and NTIA may ameliorate the situation. Specifically, the formation of the BayRICS JPA will help ensure that future procurements affecting regional shared assets for interoperable communications are open, competitive, and transparent. In addition, BOOM negotiations afford the participating jurisdictions the opportunity to negotiate costs and terms in their best interest. However, we are concerned that delays—incurred by issues existing from the start—are hindering timely project completion and pose a risk that project benefits may not be achieved.

Subsequent to our review, we became aware of a staff report—prepared by the BayRICS JPA Technical Advisory Committee (TAC) prior to the January 5, 2012, BayRICS JPA meeting—outlining concerns with project-related technical risks such as coverage, reliability, and additional costs to the JPA and participating agencies. Also, we are aware that Motorola has identified critical milestones (e.g., executing an agreement with the Bay Area Rapid Transit system to use its existing fiber network and satisfactory resolution of the FCC waiver and PSST leasing arrangement) required to successfully complete the project within the award period. As of January 6, 2012, many of those milestones were not fully complete.

Based on our analysis, NTIA must closely monitor BTOP awards to ensure project completion—or limit exposure to recipients incurring costs on a project that may not be completed. We acknowledge the oversight effort represented by your November 28, 2011, letter to the Chairperson of the BayRICS JPA, in which you express concerns about the substantial work to be done before Motorola can start construction and remind the JPA members of the program's tight project deadlines.

We recommend that NTIA make a determination whether the corrective actions underway by the grantee and political jurisdictions are sufficient to overcome the defects in the initial application. If so, NTIA needs to continue working with Motorola and the Bay Area political jurisdictions to salvage the project.

Also, NTIA and the Department should gather lessons learned from this award to employ on other BTOP and future grant programs. These lessons learned include (1) the need for an accurate description of the existing or proposed governance structure for cross-jurisdictional projects in place prior to award; (2) the establishment of clearly understood definitions for seminal terms associated with project readiness (e.g., "shovel ready"); (3) the potentially severe impact of failing to promptly address misrepresentations, inaccuracies, or deficiencies in the application that are identified after completion of due diligence; (4) the importance of a vendor selection process that avoids any appearance that the process is less than transparent and fair; and (5) the importance of distinguishing between political support represented in letters of support for a project and commitment of resources to the project.

We appreciate the cooperation provided by NTIA staff and all other parties we contacted during our additional efforts to follow-up on these complaints. If you have any questions, you can contact Ann Eilers, Principal Assistant Inspector General for Audit and Evaluation, at 202-482-2754.