
INVESTIGATIVE MEMORANDUM ON MANAGEMENT ISSUES (G-404)

September 3, 2004

To: Giovanni Prezioso
James McConnell

From: Walter Stachnik

Re: Legal Review of Procurement Actions (OIG-404)

During an investigation recently conducted by the Office of Inspector General (OIG-404), it came to our attention that the Office of Administrative Services (OAS) approved a subcontract for certain services for a firm fixed price of approximately \$200,000, while legal review of this matter was still pending in the Office of General Counsel (OGC). OAS informed us that it had been told to notify the contractor to proceed with the subcontract. In addition, we learned that this subcontractor began work after receiving verbal authorization, but before the appropriate contractual documents (i.e., a procurement requisition and task order) were executed. OAS indicated that this was a rare case and that verbal authorization to proceed was given based on urgent and compelling reasons.

We also found during our investigation that OGC did not review an executed Justification and Approval for Other than Full and Open Competition (J&A) for a related subcontract in the amount of approximately \$200,000. OGC had participated in discussions concerning the subcontract and had agreed that OAS could issue a task order for the work under an existing services contract. OGC informed us that a J&A is not required at the subcontract level. Rather, in reviewing requests for approval of subcontracts, the contracting officer must consider whether adequate price competition was obtained or its absence was properly justified. FAR 44.204(a)(5).

An existing Memorandum of Understanding (MOU) between the Office of the Executive Director and OGC, dated February 6, 1995, requires that OGC review significant procurement actions at critical phases of the procurement process to ensure legal sufficiency. The current MOU does not specify whether OGC's review should be reflected in writing.

In order to ensure that significant procurement actions are properly reviewed prior to their occurrence and that procurement actions are properly documented, Commission controls in this area should be improved.

Recommendation A

OAS and OGC should continue to follow the procedures set forth in their 1995 MOU and should develop additional policies and procedures that will improve communications between these Offices concerning procurement actions. In particular, these Offices should consider requiring that, as early in the procurement cycle as possible, OAS provide OGC with appropriate time to review for legal sufficiency complex or significant procurement actions (e.g., acquisitions above an agreed upon dollar threshold, with other than full and open competition, that present legal questions, etc.), and that OGC's legal review be documented in writing before the action is taken. These Offices should also consider requiring that OAS or OGC prepare periodic status reports concerning pending significant procurement actions and circulate these reports for review by appropriate staff members.

Recommendation B

OAS should establish procedures to ensure that the appropriate contractual documents are executed before any work is performed, including procedures for expediting the processing of paperwork in situations where there are urgent and compelling reasons to proceed quickly.

cc: Peter Derby
Darlene Pryor
Richard Humes
George Brown
Donald Sherman
Linda Sudhoff