

UNITED STATES GOVERNMENT
National Labor Relations Board
Office of Inspector General



Procurement Actions

Report No. OIG-AMR-52-07-02

March 2007

INSPECTOR GENERAL



NATIONAL LABOR RELATIONS BOARD

WASHINGTON, DC 20570

March 26, 2007

I hereby submit a review of the National Labor Relations Board (Agency) Procurement Actions, Report No. OIG-AMR-52-07-02. This audit was conducted to evaluate the process for the procurement of goods and services.

Most of the 25 contracts reviewed had some aspect that was not in conformance with the Federal Acquisition Regulation or Federal appropriations law. The non-conformances dealt with all aspects of the process including planning, awarding the contract, and monitoring contractor performance.

Two contracts reviewed involved the Agency spending more than was needed to meet the identified need or contractual obligation. In a contract for mailroom services, the Agency used the wrong Federal Supply Schedule costing the Agency approximately \$174,000 for the first 3 years of the contract. Approximately \$342,000 could be put to better use for the remaining 4 option years if the recommended corrective action is taken. In a contract for technical space planning and design services, the Agency paid a contractor \$1,150 for lunch breaks.

An exit conference was held on February 1, 2007, with representatives of the Division of Administration. A draft report was sent to the Procurement and Facilities Branch Chief on February 9, 2007. She agreed with three recommendations made in the draft report. As part of another recommendation, a payment initially charged to Fiscal Year 2006 that should have been charged to Fiscal Year 2005 was corrected. Disagreements with other findings and recommendations are addressed in the body of the report as appropriate. The response is included as an appendix to this report.



Jane E. Altenhofen
Inspector General

TABLE OF CONTENTS

BACKGROUND	1
OBJECTIVE, SCOPE, AND METHODOLOGY	2
FINDINGS	3
ALL CONTRACTS	3
Acquisition Planning.....	3
Competition.....	4
Funds Availability.....	4
Ratification.....	5
Contract File Maintenance.....	6
Inspection Clauses	6
Federal Supply Schedules.....	7
<i>Mailroom Support Services</i>	7
<i>Maintenance for Punch Machines</i>	8
PURCHASES LESS THAN \$100,000	8
Small-Business	8
Contract Administration	8
<i>Expired Option</i>	8
<i>Incremental Funding</i>	9
<i>Invoices</i>	10
<i>Advanced Payment</i>	10
PURCHASES GREATER THAN \$100,000	11
Market Research	11
Determination and Findings	11
Contract Type.....	11
MANAGEMENT'S COMMENTS AND OIG RESPONSE.....	12
RECOMMENDATIONS.....	13
ATTACHMENT 1 – Purchases Less than \$100,000.....	15
ATTACHMENT 2 – Purchases Greater than \$100,000.....	16
APPENDIX	

Memorandum from the Procurement and Facilities Branch
Chief, “Response to Draft Audit Report, Procurement Actions
(OIG-AMR-52),” dated March 12, 2007.

BACKGROUND

The National Labor Relations Board (NLRB or Agency) administers the principal labor relations law of the United States, the National Labor Relations Act (NLRA) of 1935, as amended. The NLRA is generally applied to all enterprises engaged in interstate commerce, including the United States Postal Service, but excluding other governmental entities as well as the railroad and the airline industries. The Fiscal Year (FY) 2006 appropriation authorized 1,840 full-time equivalents that are located at Headquarters, 51 field offices throughout the country, and 3 satellite offices for administrative law judges. NLRB received an appropriation of \$252,268,000 for FY 2006, less an across-the-board rescission of 1 percent, leaving a net spending ceiling of \$249,745,320. For FY 2007, the Agency is operating under a Continuing Resolution (CR) at the FY 2006 ceiling plus approximately \$1.7 million for the 2007 pay increase.

The Code of Federal Regulations Title 48 is the Federal Acquisition Regulations System (FAR). The FAR is established for the codification and publication of uniform policies and procedures for acquisition by Executive agencies.

The FAR provides that Federal agencies practice full and open competition in procuring goods and services. The Federal Acquisition Streamlining Act of 1994 removed many competition restrictions on purchases and allowed for the use of simplified procedures for soliciting and evaluating bids up to \$100,000. These procedures entail fewer administrative details, lower approval levels, and less documentation. Additionally, all purchases above \$2,500, but under \$100,000, are generally reserved for small businesses. The threshold was raised to \$3,000 on September 28, 2006.

The Procurement and Facilities Branch (PFB), Contract and Procurement Section (CPS), Division of Administration, is generally responsible for the purchase of furniture, equipment, supplies, and services for the Agency. Other offices are responsible for Government Printing Office orders, training, and select information technology requirements. The Director of Administration is the Agency's Senior Procurement Executive.

The Office of Inspector General (OIG) recently performed an audit of *Information Technology Procurement Actions* (OIG-AMR-51-06-02), which contained numerous findings. This audit was performed to determine whether similar weaknesses existed for other types of procurements.

OBJECTIVE, SCOPE, AND METHODOLOGY

The objective of this audit was to evaluate the acquisition process for the procurement of goods and services. Our scope included procurement actions other than space rent, vehicles, telecommunications, or information technology goods and services, which were the subject of other reviews. We estimate that the Agency obligated approximately \$9.1 million for actions within the scope of our review.

We reviewed applicable sections of Federal statutes and regulations, Office of Management and Budget (OMB) guidance, and Comptroller General decisions to determine the laws and regulations affecting the procurement of goods and services. We reviewed Agency policies and procedures including the Administrative Policies and Procedures Manual, Chapter CON-1, Contract and Procurement, dated August 12, 2004, and the NLRB Procurement Warrant Manuals. We interviewed employees in PFB to identify the standard operating procedures for the procurement of goods and services.

We reviewed reports prepared by the PFB and Finance Branch (Finance) and interviewed members of these branches to determine the universe of acquisitions and spending related to the procurement of goods and services and performed various analyses to find possible fraud indicators.

We selected a judgmental sample of 25 acquisitions from FY 2005 and FY 2006 (through June 30, 2006) for review. This included 20 contracts between \$2,500 and \$100,000 and 5 contracts that were in amounts greater than \$100,000. We also reviewed actions that were not in our sample that came to our attention during the review. We interviewed members of the Division of Operations-Management, Division of Administration, PFB, Finance, Library and Administrative Services Branch, and Budget Branch (Budget). We reviewed applicable documents to determine whether acquisition planning, contract administration, and contract oversight were conducted in compliance with laws and regulations.

We obtained data from the Agency's financial management system on contract approvals to determine whether a contract was signed prior to obtaining the proper approvals.

This audit was performed in accordance with generally accepted government auditing standards during the period August 2006 through March 2007. We conducted this audit at NLRB Headquarters in Washington, DC.

FINDINGS

Most of the 25 contracts reviewed had some aspect that was not in conformance with the FAR or Federal appropriations law. The non-conformances dealt with all aspects of the acquisition process including planning, awarding the contract, and monitoring performance as shown in Attachment 1 and Attachment 2.

Two contracts reviewed involved the Agency spending more than was needed to meet the identified need or contractual obligation. In a contract for mailroom services, the Agency used the wrong Federal Supply Schedule (FSS) costing the Agency approximately \$174,000 for the first 3 years of the contract. In a contract for technical space planning and design services, the Agency paid a contractor, who was a former Agency employee, \$1,150 for lunch breaks.

ALL CONTRACTS

Acquisition Planning

Section 7.102 of the FAR requires acquisition planning for all acquisitions in order to promote and provide for acquisition of commercial items and full and open competition. Also, Section 7.105 of the FAR outlines the contents of written acquisition plans, which must address all technical, business, management, and other significant considerations that will control the acquisition. The specific content of plans will vary, depending on the nature, circumstances, and stage of acquisition.

Required written acquisition plans were not completed for 20 purchases. Of these, 11 were simplified acquisitions, 5 were FSS, and 4 were greater than \$100,000. In a response to our draft report, the PFB Chief stated that the FAR does not require a written acquisition plan for every contract and that PFB intends to apply these principles without subjecting the acquisition staff to undue paperwork burdens.

Although we agree that acquisition plans should not be overly burdensome, plans are required by FAR Sections 7.102(a) and 8.404(c) for the acquisitions reviewed in this audit. Section 7.103 of the FAR does, however, provide flexibility to the Agency to establish procedures for acquisition planning with regard to the nature of the supplies and services required. This flexibility can be used to establish a reasonable level of effort for developing acquisition plans. Rather than attempting to avoid this planning requirement, PFB should fulfill the acquisition planning requirement to ensure that the contracting needs of the Agency are met.

Competition

Sections 6.303-1, 8.405-6, and 13.106-3 of the FAR state that an ordering activity must justify its action when limiting sources. Circumstances that may justify restriction include: only one source is capable of responding due to the unique or specialized nature of the work or an urgent and compelling need exists. Also, the FAR requires that justifications be documented in writing.

Adequate justification for using other than full and open competition was not documented for 10 contracts. Eight of these were purchases less than \$100,000 and the other two were greater than \$100,000.

CPS commented that a contract for replacing library doors was a compelling situation because the building lease requires the use of identified contractors. However, the lease did not include that provision. PFB stated that a contract for copier paper was not a sole source contract and provided evidence of one additional contractor solicited. Section 8.405-1 of the FAR requires that ordering activities survey at least three schedule contractors when ordering from a FSS for orders not requiring a statement of work and exceeding the micro-purchase threshold.

The sole source justification for a contract for periodic publications, Web site database access, and inquiry service, was based on the unique and specialized work to be provided and special pricing. The contract file contains no documentation that this contractor was the only available source of such services and the special pricing was not a sufficient basis to limit competition.

Funds Availability

Section 32.702 of the FAR requires that before executing any contract, the contracting officer obtain written assurance from responsible fiscal authority that adequate funds are available or expressly condition the contract upon availability of funds. The responsible fiscal authority at the NLRB is Budget, whose assurance that adequate funds are available is documented by their approval in Momentum, the Agency's financial management system.

Three contracts were entered into between 1 and 3 days before assurance that funds were available and were not contingent on the availability of funds. The Agency increases the risk of exceeding its appropriation if funds availability is not determined before entering into a contract.

Ratification

Section 1.602-3 of the FAR states that an unauthorized commitment is an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government. Ratification is the act of approving an unauthorized commitment by an official who has the authority to do so. The head of the contracting activity, unless a higher level official is designated by the Agency, may ratify an unauthorized commitment. Legal review is required prior to ratification. At the NLRB, the ratification authority resides with the Director of Administration.

Seven contracts in our sample were unauthorized commitments that were not properly ratified. Each of these contracts was approved by Budget and six were signed by the contracting officer after the performance period began. This resulted in Agency personnel accepting goods or services prior to the existence of the contracts thereby creating unauthorized commitments. The chart below provides the relevant dates for the seven unauthorized commitments.

Unauthorized Commitments

	Performance Period Began	Budget Approval Date	Contract Date
40-060038	January 1, 2006	January 11, 2006	January 1, 2006 *
40-060061	June 12, 2006	June 13, 2006	June 13, 2006
40-06RN114	October 1, 2005	October 6, 2005	October 1, 2005 *
40-050145	April 14, 2005	April 15, 2005	April 13, 2005
40-06RN116	October 1, 2005	October 25, 2005	December 5, 2005
40-06RN034	October 1, 2005	October 18, 2005	February 9, 2006
40-06RN031	October 1, 2005	February 21, 2006	February 22, 2006

* Contract backdated to reflect the contract's period of performance and referred for potential investigation.

The Director of Administration was not the contracting officer for any of the ratifications. Additionally, none of the contracts received a legal review as required by the FAR. Because these requirements were not met, an effective ratification did not occur.

PFB made various statements that ratification of these contracts was not required. The contracting officer should have been aware that beginning performance prior to the execution of a contract or a properly placed FSS order is not permissible and, if done, requires ratification.

The Director of Administration stated that a reason for the ratification problem was that PFB did not receive a Form 12, Requisition for Furniture, Equipment,

Supplies or Services, in a timely fashion. However, these ratifications were the result of requests from within the Division of Administration, including two that were initiated by PFB.

Contract File Maintenance

According to Section 4.802 of the FAR, a contract office file should generally document the basis for the acquisition and the award, the assignment of contract administration, and any subsequent actions taken by the contracting office. If the contract files or file segments are decentralized to various organizational elements or to other outside offices, responsibility for their maintenance must be assigned. A central control and, if needed, a locator system should be established to ensure the ability to locate files promptly.

Four contract files maintained by PFB contained only the initial purchase order with no supporting documentation. All of these were Library contracts and, according to PFB, supporting documentation is maintained by the Library. However, the Library's responsibility for these documents had not been assigned and no central control system was in place to ensure the ability to locate the contract files promptly.

Inspection Clauses

Subpart 46.3 of the FAR requires the inclusion of certain inspection clauses for contracts depending on the type of contract. The inspection clauses are not required for fixed-price supply or service contracts when the contract amount is not expected to exceed the simplified acquisition threshold. However, specific inspection clauses are required for cost-reimbursement service contracts and labor-hour contracts regardless of the contract amount.

The three labor-hour contracts in our sample of purchases less than \$100,000 did not have the appropriate inspection clauses. One of these included the reimbursement of expenses.

PFB stated that a contract for technical space planning and design services should not have been awarded as a labor-hour contract, but rather as a firm-fixed price contract. Without regard to their intent, this is a labor-hour contract as specified in the contract documents. Therefore, the inspection clause is required.

PFB stated that the labor-hour inspection clause did not apply to a contract for services of a senior employee relations specialist because it was a fixed-price order. We do not agree that this is a fixed-price order. The Agency was billed for services based on the hours worked at a fixed hourly rate. The purchase order states that the amount of this contract is not to exceed \$65,872.80. The

Agency actually paid \$30,191.70 for the work completed. If the Agency had entered a firm-fixed price contract for these services the Agency would have been billed for the full amount (\$65,872.80) because a firm-fixed-price contract provides for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract.

Two contracts greater than \$100,000 did not contain the appropriate inspection clause. One of these was a fixed-price contract for subscriptions and the other was a labor-hour contract for mailroom support services.

Federal Supply Schedules

The FSS program is directed and managed by the General Services Administration (GSA) and provides Federal agencies with a simplified process for obtaining commercial supplies and services at prices associated with volume buying. According to Section 8.402 of the FAR, GSA schedule contracts require all schedule contractors to publish an "Authorized Federal Supply Schedule Pricelist." The pricelist contains all supplies and services offered by a schedule contractor. In addition, each pricelist contains the pricing and the terms and conditions pertaining to each Special Item Number that is on a schedule. Section 8.002 of the FAR states that agencies shall satisfy requirements for supplies and services with priority given to optional use FSS over commercial sources.

Mailroom Support Services

The Agency did not utilize the correct FSS when it contracted for mailroom management and operations support services. The Agency used the contractor's Mission Oriented Business Integrated Services FSS, but should have used the FSS for Mail Room Management Services.

We judgmentally selected Pitney Bowes Government Solutions (Pitney Bowes) and Balmar, Inc. (Balmar), a small business, from the Mail Room Management Services FSS to estimate the costs of using the correct FSS. Our analysis used the same staffing levels as the current contract with The Kevric Company, Inc. (Kevric). The Agency could have put approximately \$53,000 to better use by selecting Pitney Bowes from the correct FSS rather than Kevric for mailroom services provided from September 20, 2005 through September 19, 2006, the first option year of the contract that was included in our sample. If the estimate is expanded to include the original contract period and second option year that was exercised in September 2006, approximately \$174,000 could have been put to better use.

According to the contract, there are 4 remaining option years. Approximately \$342,000 could be put to better use for the remaining 4 option years on this

contract if the Pitney Bowes rates are used. Balmar would save the Agency an estimated \$205,000. Given the large potential savings in years of budget austerity, the Agency should explore all options to reduce operating costs that would not significantly compromise Agency operations.

Maintenance for Punch Machines

The Agency did not utilize the contractor's FSS to purchase maintenance services for punch machines in the Printing, Transportation, and Mail Unit. The Agency entered into a contract for maintenance on three different punch machines. The contractor's pricelist includes maintenance for two punch machines, AP-2 Ultra and PB2600, that are listed on the Agency's purchase order and the FSS prices for these two items are less than the amount paid by the Agency. The Agency paid \$3,756.00 and \$341.00 respectively. If the Agency had used the contractor's FSS it would have paid \$2,857.50 and \$269.00 for a savings of \$970.50.

PURCHASES LESS THAN \$100,000

Small-Business

Sections 13.003 and 19.502-2 of the FAR state that each acquisition of supplies or services that has an anticipated dollar value exceeding \$2,500, but not over \$100,000, is automatically reserved exclusively for small business concerns and shall be set aside for small business unless the contracting officer determines there is not a reasonable expectation of obtaining offers from two or more responsible small business concerns that are competitive in terms of market prices, quality, and delivery. If the contracting officer does not proceed with the small business set-aside and purchases on an unrestricted basis, the contracting officer shall include in the contract file the reason for this unrestricted purchase. This requirement does not apply to purchases of \$2,500 or less, or purchases from required sources of supply.

Three contracts were not awarded to small businesses and none of the contract files contained a written justification. These contracts were for \$4,485 to maintain punch machines, \$29,566 for meeting space and accommodations, and \$4,080 for parking.

Contract Administration

Expired Option

The Comptroller General has held that an unexercised option expires at the end of the contract's performance period. The Agency failed to exercise the

option for personal attendant services prior to the performance period ending on September 30, 2005. Despite the lack of a contract, Agency personnel continued to accept services. On December 5, 2005, the contracting officer executed a purchase order for the services that appears to ratify the unauthorized commitment by exercising the expired option for a performance period from October 1, 2005 to September 30, 2006. The unauthorized commitment that was created by accepting services and the purported ratification was in effect a noncompetitive creation of a new contractual relationship. On September 28, 2006, the Agency again exercised an expired option to extend this contract.

Incremental Funding

Section 1501 of title 31 of the U.S. Code states that an amount shall be recorded as an obligation only when supported by documentary evidence of a binding agreement that is in writing and executed before the end of the period of availability. This requirement contemplates that each agency will record its obligations properly. Section 3512 of title 31 of the U.S. Code requires agencies to establish systems of internal accounting and administrative controls to provide agency management with reasonable assurance that the agency obligations are in compliance with applicable law and properly accounted for and recorded.

The obligation incurred by the Agency for personal attendant services was not properly accounted for or recorded. Initially, the Agency recorded an obligation for the first 3 months of the 12 month performance period at the time of what purports to be a ratification of an unauthorized commitment. At the end of the first 3 months, the contractor continued its performance even though there was no recorded obligation for that time. The remaining portion of the obligation was not recorded until March 10, 2006. Although the contract contains the FAR clause to make the agreement contingent on receiving funding for the fiscal year, at the time the contract was initially signed by the contracting officer, the Agency had received funding through a CR and that contingency had been met.

PFB stated that the reason this contract was incrementally funded was that the Agency was operating under a CR and full funding was not available. Generally, a CR will cover a limited period of time, such as a month or a calendar quarter, to allow agencies to continue to operate at a certain level of funding. The limited period of availability, however, does not affect the amount of money appropriated and does not authorize an agency to incrementally record an obligation. The Agency should record its obligations in their entirety when they are incurred. If OMB has not apportioned a sufficient amount to cover all of the contract actions, the Agency should request an apportionment from OMB for the larger amount.

Invoices

Copier paper

The NLRB contracted for recycled copier paper. The Agency received five shipments from the contractor and was charged over \$4,000 for items that were not part of the contract. The acceptance of these items created an unauthorized commitment. Rather than creating an unauthorized commitment by improperly adding items to the contract, the requisitioning officer should have used a purchase card to procure the additional items because each shipment was below the micro-purchase level.

Technical space planning and design services

We estimate that the Agency overpaid \$1,150 for a contract because lunch breaks were not deducted from the hours billed to the NLRB. The Agency contracted with a former NLRB employee to provide technical space planning and design services to NLRB Headquarters and Field Offices. According to the Contracting Officer's Technical Representative, the contractor took a half-hour lunch break every day. However, the contractor did not deduct these lunch breaks from the invoices he submitted.

Personal attendant services

In a fixed-price contract for personal attendant services, the Agency was billed and paid the contractor as if it were a labor-hour contract. Also, the Agency charged an invoice dated February 6, 2006, for services occurring in August 2005 to FY 2006 when this should have been charged to FY 2005. After we identified this error, the Agency corrected it on February 1, 2007.

Advanced Payment

Advanced payments to Government contractors for goods and services are generally prohibited unless authorized by a specific appropriation or other law or the President. One type of goods and services that has a statutory exemption from the prohibition on advance payments is publications that are printed or recorded, including searchable databases. The Comptroller General held that advance payment for an item that is not a "publication" is permissible if the item is necessary for the effective use of a publication and has no independent value so as to be useful without the publication.

The Agency paid \$12,500 in advance for periodic publications, Web site database access, and inquiry service. The inquiry service allows designated individuals to submit up to four questions during the 1-year performance

period to the contractor for a response. This inquiry service does not meet the advance payment criteria. From the contractor's pricing structure, the cost of the inquiry service appears to be \$2,500.

PURCHASES GREATER THAN \$100,000

Market Research

Section 10.001 of the FAR states that agencies must ensure that legitimate needs are identified and trade-offs evaluated to acquire items that meet those needs. Also, they must conduct market research appropriate to the circumstances before soliciting offers for acquisitions with an estimated value in excess of the simplified acquisition threshold.

The contract files contained no evidence that market research was completed for four contracts to acquire a subscription, postage meters, or copier services (two of these contracts related to copier services).

Determination and Findings

Section 17.502 of the FAR states that the Economy Act authorizes agencies to enter into mutual agreements to obtain supplies or services by interagency acquisition. Section 17.503 of the FAR requires that each Economy Act order be supported by a Determination and Finding (D&F). The D&F shall state that:

- (1) Use of an interagency acquisition is in the best interest of the Government; and
- (2) The supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source.

One contract in our sample, for copier services, was subject to the provisions of the Economy Act, but the contract file did not contain a D&F. Without this document, the Agency may not know that the use of an interagency acquisition is in the best interest of the Government and cannot be obtained as conveniently or economically from a private source. PFB stated that the D&F document not being completed was an oversight.

Contract Type

According to Sections 16.601 and 16.602 of the FAR, labor-hour contracts may be used only when it is not possible at the time of placing the contract to estimate the extent or duration of the work or to anticipate costs with any reasonable degree of confidence.

A labor-hour contract was executed for mailroom operations even though information was available to estimate the extent and duration of the work and anticipate costs. The extent of work required by the Agency was outlined in the statement of work. It stated that the Agency required a designated project manager and two mail clerks. NLRB hours of operation are between 8:00 a.m. and 6:00 p.m., Monday through Friday on all Federal workdays. With this information, the anticipated cost could be easily determined.

PFB believes that this is a fixed-price order. We disagree that this is a fixed-price order. According to FAR Sections 16.601 and 16.602, this contract should be classified as a labor-hour contract because the Agency contracted for direct labor hours at specified fixed hourly rates. Also, the Agency was billed and paid for the actual hours worked at the fixed hourly rate.

MANAGEMENT'S COMMENTS AND OIG RESPONSE

Management agreed with three recommendations made in the draft report. As part of another recommendation, Finance corrected a payment initially charged to FY 2006 that should have been charged to FY 2005.

For one recommendation, the Agency provided additional information regarding the appropriateness of certain obligations for subscriptions. Although we do not agree with the Agency's analysis, we removed that finding and the related recommendation from the final report. We feel this action is appropriate because guidance in this area is not clear and consistent.

We revised two recommendations made in the draft report based on management's comments. One recommendation was rephrased to more accurately reflect the Agency's roles and responsibilities. To address management's concerns regarding disrupting service, we changed a second recommendation to recompetete the contract at the end of the contract period. We did not revise a third recommendation because sufficient information for management to identify needed corrective action is in the body of the report. Management disagreed with our recommendation to recompetete the contract for personal attendant services. The PFB Chief stated that they are instead taking steps to ratify the contract. As we have discussed with Agency Counsel, ratification is not appropriate in this situation. Additionally, the Agency should avoid any procurement action that would result in a non-competitive award unless the Agency can prepare an adequate sole source justification.

Management disagreed with our recommendation to recompetete the mailroom contract as a fixed-price contract because they are not required to and do not think it would be cost-effective to do so. Management's assertion that recompeteting the contract would not be cost-effective is without merit since we

estimate that the Agency could save approximately \$342,000 over the 4 remaining option years. Aside from the savings, this contract should be recompeted because the Agency improperly used a labor-hour contract.

Management commented that conduct of certain OIG personnel during the course of the audit, which reflected a less than objective approach to the audit, has been raised separately with the OIG. This situation involved one meeting between Counsel to the Inspector General and a management official and did not have an impact on the OIG's assessment of the Agency's operations.

RECOMMENDATIONS

We recommend that the PFB Chief:

1. Establish procedures to ensure that all planning, competition, and contract monitoring requirements are met.
2. Establish procedures to ensure that unauthorized commitments are properly ratified.
3. Assign responsibility for file segments that are decentralized to other offices and establish a system to ensure the ability to locate these files promptly.
4. Discontinue the practice of incrementally funding contracts.
5. Obtain reimbursement for lunch breaks billed to the Agency on contract 40-060038. Review the prior contract and obtain reimbursement for any lunch breaks not deducted from the hours billed.

6. Take the following steps for contract 40-06RN116:
 - Recompete this contract.
 - Ensure that invoices are paid in accordance with contract provisions.
7. Recompete the management and operational support of the mailroom contract at the end of the current option year as a fixed-price contract using the correct FSS.

ATTACHMENT 1

Purchases Less Than \$100,000

		Description	Performance Period	Amount
1	40-06RN059 ^{abcd}	Copier Paper	10/1/05-9/30/06	\$56,960.06
2	40-060038 ^{abefg}	Technical Space Planning and Design Services	1/1/06-3/31/06	\$20,625.00
3	41-0500042 ^{abh}	Various Library Subscriptions	10/1/05-9/30/06	\$7,238.93
4	40-060061 ^{af}	Senior Employee Relations Contractor	6/12/06-10/13/06	\$65,872.80
5	426C00025	Court Reporting for R-28	1/1/06-12/31/06	\$56,805.75
6	40-06RN114 ^{aeij}	Maintenance for Punch Machines	10/1/05-9/30/06	\$4,485.00
7	PC 060323001 ^{ab}	Advanced Legal Writing and Editing Training	3/20/06	\$9,900.00
8	40-050166 ^{ai}	Meeting Space and Accommodations	8/2/05-8/5/05	\$29,565.94
9	40-06RN016	Business Reply Mail, Bulk Mail Permit, and Other Fees	10/1/05-9/30/06	\$31,500.00
10	40-050231 ^{ab}	Hearing Room Benches and Railing	9/23/05-3/31/06	\$12,133.00
11	40-050269 ^{af}	Training for NLRB Attorney Supervisors and Managers	9/28/05-11/30/05	\$13,792.93
12	40-050095	Record Center Packing Boxes	10/1/04-9/30/05	\$3,920.00
13	426C0015	Court Reporting for R-13	1/1/06-12/31/06	\$31,447.80
14	40-06RN009 ^{ai}	Parking Spaces	10/1/06-9/30/06	\$4,080.00
15	40-050145 ^{abce}	Replacement of Library Doors.	4/14/05-6/30/05	\$22,076.00
16	41-0500051 ^{ah}	Lexis – Shepard’s Online Service	11/1/05-10/31/06	\$67,840.08
17	41-0500044 ^{abh}	Various Library Subscriptions	10/1/05-9/30/06	\$7,205.91
18	40-06RN116 ^{eklm}	Personal Attendant Services	10/1/05-9/30/06	\$36,475.04
19	PC 060613002 ^{abn}	News, Publications, Website, and Inquiry Service Access	3/17/06-3/16/07	\$12,500.00
20	440500044	Notices of Elections	3/23/05-7/10/05	\$4,174.00

ATTACHMENT 2

Purchases Greater than \$100,000

		Description	Performance Period	Amount
1	41-0500048 ^{abfho}	Labor & Employment Law Library and Labor Relations Reporter	10/1/05-9/30/06	\$198,510.00
2	40-06RN034 ^{aeo}	Copier Charges	10/1/05-9/30/06	\$697,308.94
3	40-06RN014 ^{abo}	Postage Meter	10/1/05-9/30/06	\$255,000.00
4	40-06RN031 ^{aeop}	Xerox Copier Management Program	10/1/05-9/30/06	\$319,329.56
5	40-05RN033 ^{cfqr}	NLRB Mailroom Support	9/20/05-9/19/06	\$195,000.00

^a Required acquisition plan not completed.

^b Adequate justification for using other than full and open competition was not given.

^c Contract entered into before assurance that funds were available and was not contingent on the availability of funds.

^d The Agency received shipments and was charged for items that were not part of this contract, creating an unauthorized commitment.

^e Unauthorized commitment not properly ratified.

^f Contract did not contain the appropriate inspection clause.

^g The Agency overpaid for this contract because lunch breaks were not deducted from the hours billed to the NLRB.

^h Supporting documentation maintained by Library without proper assignment of responsibility.

ⁱ Contract not awarded to a small business and the contract file did not contain the appropriate written justification.

^j The Agency did not use the contractor's FSS for this contract.

^k An expired option was exercised for this contract.

^l Contract was incrementally funded.

^m The Agency was billed and paid the contractor as if this was a labor-hour contract and incorrectly charged one invoice to one fiscal year when it should have been charged to another.

ⁿ The Agency made an unauthorized advanced payment for inquiry service as part of this contract.

^o No evidence in the contract file that market research was conducted.

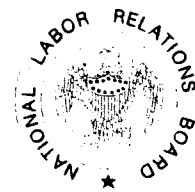
^p A D&F was not completed for this contract.

^q The correct FSS was not used for this contract.

^r This was a labor-hour contract even though information was available to estimate the extent and duration of work and anticipate costs.

APPENDIX

UNITED STATES GOVERNMENT
National Labor Relations Board
Division of Administration
Memorandum



TO: Jane E. Altenhofen
Inspector General

FROM: Angela F. Crawford
Procurement and Facilities Branch

A handwritten signature in black ink, appearing to read "Angela F. Crawford", is written over the printed name in the "FROM" field.

DATE March 12, 2007

SUBJECT: Response to Draft Audit Report, Procurement Actions (OIG-AMR-52)

This is in response to draft OIG-AMR-52, Procurement Actions, dated February 9, 2007. As noted in the outbrief meeting of February 1, 2007, we do not agree with many of the findings, but will not reiterate all of those disagreements herein. The response, below, generally tracks the order of the comments/findings/recommendations as set forth in the audit report.

BACKGROUND

The OIG's reference to others having the responsibility for "select information technology requirements" refers to a pilot arrangement whereby the Associate CIO for Program Management has been given a procurement warrant. We view this arrangement as problematical and have so informed the Inspector General, inasmuch as this split procurement arrangement for IT acquisitions creates internal control problems which put the Agency's procurement program at risk.

OBJECTIVE, SCOPE, METHODOLOGY

The conduct of certain OIG personnel during the course of the audit, which reflected a less than objective approach to the audit has been raised separately with the OIG and will not be repeated here.

FINDINGS

ALL CONTRACTS

Obligations

We disagree with the OIG's finding regarding the funding of subscriptions. Agency Counsel has advised management and informed the OIG of its view that

the funding of these procurement actions were legal and appropriate. Moreover, the actions were in keeping with accepted practices government-wide, including at the Department of Defense, which has published a written regulation specifically allowing this practice. Agency Counsel has recently confirmed with the Department of Defense that the regulation which authorizes advance payment for subscriptions in a subsequent fiscal year is valid.

Acquisition Planning

The OIG criticizes the lack of written acquisition plans for 20 contracts, such as the contracts for the purchase of packing boxes and copier paper. We believe the criticism is misplaced. The Federal Acquisition Regulations (FAR) do not require a written acquisition plan for every contract. FAR 7.103(f), which provides that agencies should ensure "that the principles of this subpart are used, as appropriate, for those acquisitions that do not require a written plan, as well as for those that do", clearly contemplates that a written acquisition plan is not necessary for every contract. (Emphasis added.)

We believe in full and open competition with fair and reasonable pricing. However, we intend to apply these principles without subjecting the acquisitions staff to undue paperwork burdens, particularly when making routine purchases of goods and services.

Competition

The referenced acquisition of periodic publications, web site access, and inquiry service refers to a procurement reference service offered at an extremely discounted price which was negotiated by the Small Agency Council Procurement Committee on behalf of small agencies. We agree that the file should have contained documentation that the contractor was the only viable source of such services and evidence that the pricing was competitive.

Mailroom Support Services

We have received exceptionally positive feedback on the mailroom services provided under the current contractual arrangement. The bidders for this contract were carefully scrutinized, including reviewing past performance. Without knowledge of how the OIG selected and evaluated the two unidentified vendors used for comparison, or what criteria the OIG applied, if any, in evaluating their services, we cannot agree with the OIG's conclusion that funds could be put to better use regarding this contract.

SIMPLIFIED ACQUISITIONS
Contract Administration
Personal Attendant Services

The contract type is governed by the contract language and not by how it is billed. The contractor was not paid more than the agreed-upon fixed price.

RECOMMENDATIONS

- 1. Coordinate with the Finance Chief to correct the recording of obligations identified so that the amounts are recorded against the appropriate fiscal year.**
Response: We do not agree with this recommendation for the reasons set forth above.
- 2. Establish controls to ensure that all planning, competition, and contract monitoring requirements are met.**
Response: The recommendation is too general to allow any response other than that we will continue to follow the FAR and attempt to avoid errors related thereto.
- 3. Establish procedures to ensure that unauthorized commitments are properly ratified.**
Response: We agree with this recommendation. Draft procedures have been created and they are being staffed with appropriate offices for review and comment.
- 4. Assign responsibility for file segments that are decentralized to other offices and establish a system to ensure the ability to locate these files promptly.**
Response: We agree with this recommendation to the extent that file documents are within our control. See remarks under "Background", above.
- 5. Discontinue the practice of incrementally funding contracts.**
Response: We disagree with this recommendation. We are not aware of any contracts that have not been properly funded and are not in accordance with Government Accountability Office standards.
- 6. Obtain reimbursement for lunch breaks billed to the Agency on Contract 40-060038. Review the prior contract and obtain reimbursement for any lunch breaks not deducted from the hours billed.**
Response: We agree with this recommendation and have begun steps to obtain reimbursement.

7. Take the following steps for Contract 40-06RN116 (Personal Attendant Services):

- **Recompete this contract.**

Response: We do not agree with this recommendation. In order to re-compete, the Government would have to terminate for convenience, which would cause disruption of services. Instead, we are taking steps to ratify the contract.

- **Ensure that it is billed in accordance with the terms of the contract.**

Response: We disagree with this recommendation. We cannot guarantee that the vendor will *invoice* the Agency appropriately. We can only ensure that the Agency will *pay* the vendor appropriately.

- **Correct the obligation charged for one invoice so that it is charged against the FY05 obligation.**

Response: We agree with this recommendation. Finance has corrected this obligation.

8. Recompete the management and operational support of the mailroom contract as a fixed-price contract using the correct FSS.

Response: We do not agree with this recommendation. We are not required to re-compete this contract, nor do we think it is efficient or cost-effective to do so. In order to re-compete now, the Government would have to terminate for convenience, which would cause a disruption of the services of a contract that has worked very well for the Agency to date.

cc: The Board
General Counsel
Director of Administration