



National Archives and Records Administration

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Date : March 2, 2010

Reply to : Office of Inspector General (OIG)

Subject : Management Letter No. OI 10-01, 1930 Census Website Contracting Issues

To: David S. Ferriero, Archivist of the United States (N)

The purpose of this management letter is to inform you of contracting problems surrounding the National Archives and Records Administration (NARA's) 1930 Census microfilm locator website, <http://1930census.archives.gov/>. The Office of Inspector General (OIG) discovered these issues while investigating a potential unauthorized access of a NARA computer system. Based upon our analysis, from approximately April 2003 until June 2006, NARA used hosting services for this site from a contractor without paying for them. NARA's lack of effective file keeping prevents a definitive calculation of the value of these services. However, based upon NARA's prior and subsequent payments for the service and contractors' bids, the approximate fair market value of the 37 months of work NARA received for free is somewhere between \$83,116 and \$744,371.¹

Federal agencies are not allowed to accept gratuitous services, gifts, or voluntary services from contractors except under very limited circumstances specifically allowed by law. In the present case there was no authority for NARA to accept such services for free. When asked directly about these services, the Director of NARA's Acquisition Services Division (NAA) and the contracting officer's technical representative (COTR) for this issue expressed unfamiliarity with what happened. We note the current Director of NAA did not assume the position until January 2005. Further, NARA's lack of an effective record keeping or filing system has made it impossible to decipher the facts surrounding this action based upon a lack of documentary evidence. If a contractor is expecting payment, accepting services without paying for them can lead to lawsuits. If a contractor is not expecting payment, accepting free services could be a violation of the Antideficiency Act or could be considered an improper augmentation of an agency's appropriation.

Regardless of any legal implications, accepting free services or "gifts" from a contractor doing business with the federal government can certainly give the appearance of impropriety to other contractors and the general public. While we found no actual evidence of untoward conduct by any of the parties involved, there is certainly a perception issue when the government receives services for free from a contractor engaged in other work at an agency. This is especially true in

¹ In 2003 NARA was paying a contractor \$20,118 per month specifically for 1930 Census site web-hosting services. Another contractor's 2003 bid to provide web-hosting for the 1930 Census and another site totaled \$26,956 per year. NARA's current contract covers web-hosting and other services for the 1930 Census and multiple other sites at approximately \$20,030.42 per year.

light of the fact NARA awarded this particular contractor over \$43 million in contracts during the relevant time period.² Neither the Director of NAA nor the relevant COTR was responsive when asked what they thought of any perception issues.

One reason NAA disputes that there was any issue with accepting these services without payment is based on the contention the vendor did not actually incur costs. NAA contends the contractor was able to provide these services at either little or no cost using equipment NARA was already paying to use to host other websites. This is akin to saying that since NARA already has cell-phones there would be no problem if a telecommunications company gave us service plans for free, since adding customers to an existing cell-phone network costs a company a comparatively negligible amount. This completely ignores the fact these services had a fair market value. In fact, immediately prior to accepting this work for free, NARA was actually paying a different contractor approximately \$20,000 per month to host this site.³ Further, the contractor, before actually providing these services for free, submitted a bid to do this exact work for a fee. Finally, the work is now covered under a new contract and is being paid for.

We identified other issues surrounding the contracting actions involving NARA's 1930 Census website, including:

- the contractor's development of the 1930 Census website, and evaluation of bids on the site's initial hosting, may have been outside of the scope of their contract;
- NARA was unable to confirm whether work on another web-based project during this same period was competitively bid or not;
- NARA was unable to explain why a FY 2002 purchase order was paid in FY 2003;
- In contract documents the contractor stated their support of the 1930 Census and OurDocuments websites were covered by "other agreements," but NARA was unable to explain to our office what these agreements were or provide copies of these agreements;
- NARA was unable to explain why a contractor was allowed to bid on the second contract for hosting the 1930 Census website after that contractor reviewed all bids (including the incumbent's) for NARA on the first web-hosting contract for the site.

While important in their own right, the overarching problem apparent in trying to research these issues is the lack of effective recordkeeping for these contract actions. In multiple instances, when asked about procurements or contracting actions related to this management letter, neither the current Director of NAA nor the relevant COTR would comment because there was no personal or institutional memory, and they were unable to produce relevant documentation. As a result, both the current NAA leadership and our office were severely impaired in investigating the circumstances surrounding the 1930 Census website. We realize some of the actions reviewed in this management letter are fairly old, starting in FY 2001. However, the problem of free services

² All contracts with this contractor for the relevant period were competitively awarded.

³ This contract had allocated for a very high level of traffic to the site, however, this traffic had reduced significantly.

persisted until FY 2006 and therefore these records should be readily available and thoroughly detailed.

When presented with the issues in this management letter, NAA indicated they had previously recognized some of the deficiencies presented, particularly with documentation, and have been working to overcome them. In particular, the problematic issues were generally done by “field” contracting officers (COs) who were warranted COs, but were not actually assigned and working in NAA. The new Director of NAA has made many improvements since arriving in 2005 in this non-NAA acquisition area, including the consensual removal of the CO in question for this issue. NAA has taken several other laudable steps in this area including implementing a mandatory three day simplified acquisition training class for such staff, changing some COs to buyers⁴, requiring all COs and buyers to complete training classes, reviewing the documentation of the field offices, assigning a dedicated NAA CO to work with the field staff, working with NR and NL to allow existing COs to perform acquisition support to other offices to help eliminate the problems of some offices doing infrequent purchases, and reducing almost all CO warrants to \$25,000.

However, even with these improvements the conditions discussed in this management letter demonstrate a lack of transparency and accountability in the actions surrounding the 1930 Census website. Furthermore, at the very least they give the appearance of impropriety in this contracting action to the public and other contractors. By March 31, 2010, please submit an action plan to the OIG describing how you plan to address the issues discussed in this management letter including the recommendations of the agency ethics official and general counsel’s office. If you have any questions, or require additional information, please do not hesitate to contact me.

Paul Brachfeld
Inspector General

cc: NAA (A. Edgar)

⁴ Buyers prepare the acquisition documents but the award is reviewed and signed by a CO.