

Memorandum*Office of the Inspector General*

TO: Donald L. Scott Deputy Librarian

February 13, 2004

FROM: Karl W. Shornagel
Inspector General

SUBJECT: Sole-sourced Consulting Contracts

It has come to our attention that certain individuals have been awarded a large number of sole-sourced consulting contracts. As an example, we discuss in this memorandum the consulting contracts awarded to [REDACTED]. Since 1999, the Library has awarded [REDACTED] a total of [REDACTED] contracts, including [REDACTED] modifications, in the cumulative amount of [REDACTED] or slightly in excess of [REDACTED] in each of the last five years. All these contracts were sole-sourced to [REDACTED] none were competed. The Library is currently awarding another sole-source contract to [REDACTED] in the amount of [REDACTED].

The contracts collectively call for a consultant to, among other things:

- Conduct and facilitate meetings, retreats, and workshops;
- Perform and document workflow analyses, and design workflow models;
- Prepare reports and other memoranda related to the meetings; and
- Prepare automation transition plans.

There is no dispute about the fact that [REDACTED] possesses the necessary qualifications to perform the requirements under the contracts. The sole-source justifications opine that [REDACTED] is a "recognized expert and leader in the fields" and "we consider [REDACTED] uniquely qualified[.]" A review of [REDACTED] qualifications, in fact, supports these assertions. The justifications go on to claim that "to hire another consultant ... would have a severe negative impact[.]" In effect, taking the sole-source justifications for all these contracts at face value implies that [REDACTED] is the only person qualified to perform the contractual tasks. Additional factors presented in support of this conclusion are [REDACTED] long experience with the Library and familiarity with Library processes. Two questions arise with respect to these assertions:

- Have we established a model that imbues consultants with Library experience by virtue of repeated sole-source awards? This creates a pool of consultants who are awarded a lion's share of contracts. The practice would tend to reinforce the view that these consultants are solely and uniquely qualified for the Library, thus placing it in an inferior negotiating position.
- Are the contractual tasks as shown really so unique that only [REDACTED] can successfully perform them? To the uninformed eye, "facilitating a meeting" appears to be a fungible skill.

Clearly, [REDACTED] history and the Library's familiarity and comfort level with [REDACTED] abilities are strong factors in support of the sole-source justification. There is no question that those attributes give [REDACTED] a significant advantage in the contract award. Do these attributes, however, render [REDACTED] solely and uniquely qualified for the apparently non-unique tasks listed in the contracts?

Some Library managers argue that the Library's unique and specialized needs often result in situations where only one individual has the requisite skills for a particular project (the "Chinese Mapmaker" example is frequently cited in support of this proposition). The same Library managers further argue that competing consulting contracts where there is only one possible competitor would be a waste of resources.

The Federal Acquisition Regulation requires Federal Agencies to compete significant contracts, such as those awarded to [REDACTED]. The Library has decided that it will not comply with the FAR with respect to experts and consultants (LCR 1514-3, and proposed LCR 2111).¹ Both the GAO and GPO follow the FAR with no exceptions. The Library stands alone in the legislative branch, and indeed, in the government, on this issue.

Awarding contracts without competition can open the Library to criticism from both Congress and the press. Moreover, as we noted in our report number 2000-INA-LCWD-004, *Consulting Contracts: More Competition, Cost Analysis, and Administrative Compliance Needed* (September, 2002), it can result in the Library paying more for services than it should. Without competition, the Library cannot know if the sole-source bid it has received is the best price, as it has no basis for comparison.

We recognize that competing consulting contracts will result in a longer process, and a loss of some flexibility to Library managers. It is also quite possible that the result will be the same as a sole-source award. If the desired consultant's skills and abilities are so uniquely matched to the position's requirements, then it is likely he or she will be awarded the contract. This process may take longer, but exists for a reason: it is a public institution's way of assuring the public that their funds are fairly and equitably spent. Furthermore, competing a contract is the best way to induce bidders to offer the best possible price.

The government's fiduciary responsibility to the American public requires us to both safeguard and make the best use of public funds. Awarding consulting contracts without due competition is a violation of this fiduciary responsibility. The Library is preparing to officially issue LCR 2111, which will continue the practice of sole-sourcing expert and consulting contracts. We strongly urge the Library to reconsider its position on experts and consultants prior to issuance of this LCR.

cc: Jo Ann Jenkins, Chief of Staff
Elizabeth Pugh, General Counsel

¹ CRS has specific statutory authority to non-competitively procure temporary expert and consultant services, and would not be affected by a revision to LCR 2111 requiring competition.