

Conflict of Interest Controls in Procurement

EXECUTIVE SUMMARY

We found that the Commission's conflict of interest controls in procurement were functioning, but they can be improved. The relevant regulation (SECR 10-15) needs to be updated to reflect current practices and to help ensure that required documentation (such as the Certificate of Non-Disclosure and Financial Interest, and the appointment memorandum for the Contracting Officer's Technical Representative) is prepared and maintained.

We are recommending that the Office of Administrative Services (OAS) revise the regulation and take steps to enhance related training and record-keeping. Our report has been modified to reflect OAS's comments on prior drafts.

SCOPE AND OBJECTIVES

We began this audit after an investigation by our office disclosed that an employee participated in a procurement while holding a disqualifying financial interest in a firm involved in the procurement. Our objective was to assess the adequacy of the Commission's conflict of interest controls in procurement.

During the audit, we reviewed relevant procurement procedures and guidance. We interviewed numerous procurement staff throughout the Commission, and reviewed relevant documentation. To test the conflict of interest controls, we selected a judgment sample of 14 contracts.

Our selection was complicated by the fact that OAS's procurement records did not identify which contracts had the controls we wished to test. Consequently, in some cases, certain conflict of interest controls were not applicable to the contracts in our sample (e.g., because a COTR was not appointed or a source selection panel was not used), as detailed in the Audit Results section. To supplement our results, we surveyed current Contracting Officer's Technical Representatives (COTR).

Our audit was performed between August 2005 and April 2006 in accordance with generally accepted government auditing standards.

Background

Presented below is a summary of the major controls used to prevent and detect conflicts of interest during procurements. Most of these controls are described in Commission Administrative Regulation SECR 10-15, Contracting Officer's Technical Representative (COTR) and Inspection and Acceptance Official (IAO), issued November 4, 2004.

Office of Government Ethics Form 450

The Office of Government Ethics (OGE) requires certain classes of employees to disclose their (and their immediate family's) financial assets and liabilities, and outside interests. The purpose of the disclosure is to identify potential conflicts between an employee's official position and the employee's private interests, so that appropriate protections against such conflicts can be fashioned.

At the Commission, employees who work on procurements (among others) are required to file the OGE Form 450. The employee's supervisor or other designated official reviews the completed form to determine whether any conflicts exist, and initiates appropriate action in that event to prevent a conflict (*e.g.* reassignment of the employee, divestiture of stock by the employee).

Certificate of Non-Disclosure and Financial Interest

Staff serving on a source selection panel must sign a Certificate of Non-Disclosure and Financial Interest form. This form requires the employee not to disclose the source selection information. Also, the employee certifies that he or she does not have an interest in any firm submitting a response to the solicitation (See SECR 10-15, Attachment).

The Certificate helps ensure that those participating on a source selection panel do not have an interest in any firm being considered for a contract award.

COTR Appointment Memorandum

Under SECR 10-15, subsections 5 (b), (c), and (d), COTRs are required to sign an appointment memorandum. The memorandum identifies the contract the COTR is assigned to, and defines the COTR's roles and responsibilities. The memorandum includes language relating to procurement integrity and the avoidance of conflicts of interest.

By signing the appointment memorandum, the COTR indicates that he or she has read, understands, and accepts the duties, responsibilities, and limitations of the appointment. The COTR's supervisor also signs the appointment memorandum to indicate that he or she recognizes and accepts the demands of the COTR responsibilities on the employee. The memorandum is filed in the contract file.

Training

SECR 10-15, subsection 4(1)(e), requires COTRs to receive procurement ethics and procurement integrity awareness training, as part of required COTR training of 40 hours. The training courses are selected by the COTR candidate. The Contracting Officer confirms compliance with this requirement.

COTR Appointment Records

SECR, 10-15, section 6 requires the OAS Procurement & Contracting Branch to maintain information on COTR appointments, including the date of appointment, the specific contracts assigned to the COTR, and the details of COTR training courses, including the topic requirements each course satisfies.

Audit Results

We found that the conflict of interest controls in procurement were functioning, but that they can be improved in certain respects. We are making several recommendations to the Office of Administrative Services and the Office of General Counsel, as discussed below.

OGE Form 450

Based on our review, all 58 of the Commission's currently active COTRs filed the OGE Form 450 in fiscal year 2005, as required.

Certificate of Non-disclosure and Financial Interest

Audit Results

Of the fourteen contracts in our sample, five involved a source selection panel in which a Certificate of Non-Disclosure and Financial Interest (see Background) was appropriate. We found that in three of these five contracts, the panel members signed a properly executed Certificate. In one case, the Certificate was not in the contract file. In the other case, the solicitation number was correctly referenced in the Certificate, but the name of the solicitation was not updated.

Regulation

SECR 10-15 3(c) indicates that program officials are to submit a completed Certificate for individuals nominated as COTR candidates. SECR 10-15 4(c) requires that a signed Certificate be in the employee's official personnel file before the employee is nominated as a COTR.

OAS staff indicated that (as stated in the Background) the Certificate relates to the staff serving on a source selection panel, rather than to a COTR. Evaluation panel members sign the Certificate, which is then placed in the contract file.

OAS plans to revise the provisions of 3(c) and 4 (c) to reflect its actual practices. Other revisions to regulation SECR 10-15 may be appropriate.

For example, the sample Certificate attached to the regulation is deficient, in that it refers in several places to a specific solicitation. Instead, the Certificate should contain a space for insertion of the appropriate solicitation being considered. Use of the sample Certificate with an incorrect solicitation name (as occurred in our prior investigation and in one of the sampled contracts) would invalidate the signed Certificate.

Recommendation A

OAS should revise the regulation at SECR 10-15 to cover the proper use of Certificates and the role of staff other than COTRs, as discussed above.

Appointment Memorandum

In accordance with SECR 10-15, 5(d), the Contracting Officer is to maintain a copy of the signed appointment memorandum in the contract file. A copy of the appointment memorandum is to be provided to the contractor.

Of our sample of 14 contracts, three were assigned a COTR. Two of these three contracts contained an appointment memorandum in the contract file.

Recommendation B

OAS should develop procedures to ensure that the COTR appointment memorandum is signed, provided to the contractor, and maintained in the contract file (e.g., by adding the memorandum to the listing of contents kept in contract files).

Management response: OAS indicated that this recommendation has already been implemented.

Ethics Training

As discussed in the Background, COTRs are required to attend training on procurement ethics. The Procurement and Contracting Branch is required to maintain records showing compliance with this requirement.

Our review of the Branch's records showed they lacked specific information to demonstrate that COTRs received ethics training. We then surveyed the 58 current COTRs. Most of them indicated that they had not received specific training on procurement ethics.

OAS staff noted that the general COTR training recommended for COTRs includes ethics training. Thus, obtaining the certificate of training would ensure that the required ethics training was received.

Recommendation C

OAS should develop procedures to ensure that all COTRs receive procurement ethics training, and should ensure that the training is properly

documented (*e.g.*, by obtaining the training certificate for a course including ethics training).

Management response: OAS indicated that this recommendation has already been implemented.

Procurement Training

The ethics staff in the Office of the Ethics Counsel provide ethics advice to the Commission's procurement staff. Knowledge of procurement regulations would be helpful to the ethics staff in providing this advice.

Recommendation D

The Office of General Counsel should provide procurement training to the staff of the Office of the Ethics Counsel.

COTR Appointment Records

We found that the COTR Appointment Records maintained by the Procurement and Contracting Branch (see Background) were not complete and up to date. The records did not include specific information to confirm that COTRs received required training. Also, five employees listed were no longer COTRs, and seven COTRs we identified (through our sample of eight fiscal year 2005 contracts) were not listed in the records.

Recommendation E

OAS should develop procedures to ensure that its COTR appointment records are complete and up to date.

Management response: OAS indicated that this recommendation has already been implemented.