



Department of Veterans Affairs Office of Inspector General

Administrative Investigation Improper Selection of a Contractor Austin Automation Center Austin, Texas

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DEPARTMENT OF VETERANS AFFAIRS
Office of Inspector General
Washington, DC 20420

TO: Assistant Secretary for Information and Technology (005)
Assistant General Counsel, Professional Staff Group V (025)

SUBJECT: Administrative Investigation – Improper Selection of a Contractor,
Austin Automation Center, Austin, TX (2006-01219-IQ-0085)

Summary

We substantiated that officials in VA's Office of Information and Technology and its Austin Automation Center (AAC) did not properly plan for or compete a Task Order for services to assess VA's options for acquiring and managing its future information technology support contracts. The responsible contracting officer, with the knowledge of the AAC Head of Contracting Activity, failed to comply with requirements mandating competition. Additionally, a staff attorney who reviewed the Task Order did not adequately research acquisition regulations before providing legal advice on this matter. The Assistant General Counsel for Professional Staff Group V did not concur with our recommendation that appropriate administrative action be taken against the attorney. We disagree and are issuing this report with that recommendation unresolved.

Introduction

The VA Office of Inspector General, Administrative Investigations Division, investigated whether the Head of Contracting Activity at VA's AAC properly managed the activity of a contracting officer, and whether that contracting officer properly arranged a \$64,965 Task Order with Logistics Management Institute (LMI), a management consulting corporation. In addition, we investigated whether an Office of General Counsel staff attorney provided appropriate assistance and advice. The procurement in question was for an assessment of VA's options for acquiring and managing its future information technology support contracts. We interviewed the AAC's Head of Contracting Activity, the responsible contracting officer, the staff attorney, the AAC's Chief of Acquisition Management Services, the former Assistant Secretary for Information and Technology and one of his former Associate Deputy Assistant Secretaries, the Deputy Assistant Secretary for Acquisition and Materiel Management, and an LMI representative. We reviewed the procurement documents; legal reviews; and other pertinent correspondence, Federal regulations, and VA policy.

Results

Issue: Whether AAC officials failed to comply with requirements mandating competition

Federal Acquisition Regulations require agencies to provide a request for quotes (including the statement of work and evaluation criteria) to at least three suitable Federal Supply Schedule contractors when the amount of the order exceeds \$2,500, unless specified circumstances, such as the existence of “an urgent and compelling need,” justify considering a fewer number of contractors [48 CFR §8.405-2(c), 8.405-6(a), (b)]. Agencies may not contract for services non-competitively based on a lack of advance planning [41 USC §253(f)(5)(A)]. The Acquisition Regulations require contracting officers to ensure that all requirements of law and regulations have been met before entering into a contract and that contractors receive impartial, fair, and equitable treatment [48 CFR §1.602-1(b), 1.602-2(b)]. Finally, the Regulations authorize heads of contracting activities to maintain overall responsibility for managing agency contracting functions [48 CFR §1.601, 2.101(b)].

The former Assistant Secretary for Information and Technology told us that in December 2005 he met with representatives from LMI as part of his effort to develop a strategy for replacing VA’s “Procurement of Computer Hardware and Services” (PCHS) contract. He said LMI representatives advised him they could provide an analysis of VA’s options for acquiring and managing its information technology support contracts, and the analysis could be procured from them non-competitively through an existing interagency agreement between VA and the U.S. Army Corps of Engineers, which had a previously competed contract with LMI. After the meeting, the former Assistant Secretary requested that one of his Associate Deputy Assistant Secretaries contract with LMI, using the interagency agreement. He said he told the Associate Deputy he wanted LMI to conduct the assessment, but if LMI could not do it, he still wanted an assessment conducted and done quickly. According to the former Assistant Secretary, the urgency was due to the fact that the PCHS contract was nearing its financial cap. He acknowledged, however, that he had known since 2004 that this would happen in early 2006 and that the contract expired in 2007. He said at the time he met with LMI, his staff had been addressing various strategies for replacing PCHS for many months, but that he found those strategies unacceptable.

On December 27, 2005, after learning that the Office of Information and Technology could not use the interagency agreement between VA (specifically, the National Cemetery Administration) and the U.S. Army Corps of Engineers since it was for construction-related services, the Associate Deputy asked the AAC’s Head of Contracting Activity to initiate a sole source procurement with LMI and sent her a draft justification for not seeking full and open competition. The justification stated that LMI was highly specialized in the type of work sought and very familiar with VA, and that its

expertise was needed immediately because the PCHS contract was expected to expire in February 2006 based on contract ceilings. The Associate Deputy told us he depended on the contracting office's expertise to determine if the assessment could be procured non-competitively.

The Head of Contracting Activity forwarded the draft justification to a contracting officer who added that, because the use of PCHS within the Department had been mandatory and VA risked slowing or stopping mission-critical information technology programs without a manageable plan to replace it, VA had "an urgent and compelling need" to contract with LMI. The contracting officer told us she based this justification on her conversations with the Head of Contracting Activity, her knowledge that the PCHS contract would expire sometime in 2006, and her knowledge that a contract for the analysis needed to be in place prior to a January 3, 2006, meeting involving VA staff throughout the country to discuss the future of PCHS.

On December 28, 2005, at the direction of the Head of Contracting Activity, the responsible contracting officer sent a request for quote to LMI. LMI responded the following day and the contracting officer shared the response with the Head of Contracting Activity. Since the contracting officer did not have the proper warrant to authorize this particular procurement, the Head of Contracting Activity instructed her to have a qualified person sign it in her place. An authorized contracting officer signed a Task Order on December 30, 2005. That person told us that, at the time, he had been a VA employee for only 2 months, and the responsible contracting officer explained to him the PCHS contract would expire in February 2006 and, without a replacement ready, a critical agency mission would be affected.

On January 9, 2006, due to concerns about the propriety of this sole source procurement, Office of Acquisition and Materiel Management officials in VA Central Office requested that the Office of General Counsel review the sole source justification (a document entitled "Limited Source Justification"), noting in an electronic mail message that poor planning on the part of the Government did not constitute urgency. The Office of General Counsel's reviewing attorney concluded that the justification did not adequately explain what delays would occur if the requirement was competed through the Federal Supply Schedule; did not explain why other methods of acquiring items covered under PCHS (generally commercial items) could not be used; and did not explain what differentiated LMI from other consulting groups with similar acquisition expertise.

On January 11, 2006, the Head of Contracting Activity, the responsible contracting officer, and the AAC's Chief of Acquisition Management Services met with a second Office of General Counsel attorney to discuss the legal review. According to this staff attorney, the contracting officer told him that, in addition to sending the request for quote to LMI, she telephoned five other vendors but none of them was interested, so she sent the request only to LMI. The staff attorney concluded, based on this previously

undisclosed information, that the “laws and regulations concerning competition were met,” and he advised the contracting officer to remove the sole (limited) source document from the file. Since the staff attorney concluded that the award satisfied competition requirements, there was no reason to justify a sole (or limited) source award.

The contracting officer amended the record on January 11, 2006, documenting that, in addition to soliciting LMI, she telephoned five service-disabled veteran-owned small businesses and none of the five returned her call, “thereby declining the invitation to submit a quote.” The contracting officer told us that although she believed a sole source procurement was justified, she had been instructed to always consider service-disabled veteran-owned small businesses, which she did in this instance by contacting these other vendors. She said, in her telephone messages, she provided the general scope of VA’s need, stated the project would start within a week, and asked for a response within a day. The contracting officer acknowledged that leaving voicemails and not sending the request for quote to any firm other than LMI did not constitute competition, but she said she followed the instructions given to her to discard the sole source justification and amend the file based on her contacting these other businesses. The AAC’s Chief of Acquisition Management Services said he believed that although regulations required sending the request for quote to at least three vendors, in the case of an urgent procurement, placing telephone calls and receiving no responses from five or six firms met the “spirit and intent” of the regulation.

The staff attorney told us that when he advised the responsible contracting officer to remove the sole source justification from the file, he believed her calls were sufficient to meet the competition requirement. He told us he did not review the applicable acquisition regulations prior to providing her advice and said his assessment of whether the Task Order was properly competed was “off the top of my head.” The staff attorney said he was later told that the regulations require the contracting officer to actually send a solicitation to at least three vendors. He acknowledged that the responsible contracting officer should have called additional vendors until she found enough that were interested in receiving the request for quote.

Conclusion

Office of Information and Technology, AAC, officials did not properly compete the Task Order for an assessment of VA’s options for acquiring and managing its future information technology support contracts. Although an urgent need to analyze the options existed, the urgency was due to a lack of planning on the part of the VA Office of Information and Technology employees requesting the procurement. The contracting officer who obligated the Government was a new VA employee unfamiliar with the PCHS contract, and he relied on the responsible contracting officer’s explanation of the urgency. The responsible contracting officer amended the file to suggest that she properly competed the procurement, even though she acknowledged that, by not actually

sending vendors other than LMI requests for quotes, she knew she did not meet the requirements for competition. Her actions resulted in a sole-source award to LMI that was not justified.

The AAC's Head of Contracting Activity failed to provide proper oversight in this matter. Although she did not directly commit the Government in this action, she had the overall responsibility for managing the process and was aware of the documents prepared and activities undertaken relevant to the procurement.

Regarding the staff attorney, he should have reviewed the applicable acquisition regulations prior to providing his legal opinion. He had a responsibility to provide accurate, well informed advice.

The former Assistant Secretary for Information and Technology knew for over a year that the PCHS contract would reach its financial cap in early 2006 and that, therefore, a new contract would be required. Although he found all strategies presented by his staff to be unacceptable, it was not until December 2005 that he requested an outside source provide an assessment. As a result of his poor planning, AAC acquisition officials were faced with unnecessary pressure to make an immediate award, leading to the situation discussed in this report. The Assistant Secretary is no longer with VA; therefore, we have no recommended action due to his poor planning.

Recommended Action(s) 1. We recommend that the Assistant Secretary for Information and Technology take appropriate administrative action against AAC's Head of Contracting Activity for failing to provide proper oversight during the award of this Task Order.

Recommended Action(s) 2. We recommend that the Assistant Secretary for Information and Technology take appropriate administrative action against the responsible contracting officer for failing to properly compete the procurement.

Recommended Action(s) 3. We recommend that the Assistant General Counsel, Professional Staff Group V, take appropriate administrative action against the staff attorney for not properly researching a legal matter prior to providing advice.

Comments

The Assistant Secretary for Information and Technology concurred with the recommendations to take appropriate administrative action against the Head of Contracting Activity and the responsible contracting officer. We will follow up to ensure that such action is taken.

The Assistant General Counsel, Professional Staff Group V, did not concur that administrative action against the staff attorney was appropriate. Her response

demonstrates an unwillingness to ensure that her staff provides sound legal advice and guidance to VA clients, and hold them accountable when this does not occur. The Assistant General Counsel did not offer any basis for her decision that administrative action was not appropriate. She did not disagree with the findings of fact or our conclusion that the legal advice was erroneous and caused VA officials to violate Federal Acquisition Regulations in the award of the Task Order.

Instead of taking action to ensure that OGC staff does the research and analysis needed to provide sound and competent legal advice that enables VA to comply with the law and act in the best interest of the Government, the Assistant General Counsel plans to advise the attorneys in Professional Staff Group V to provide caveats when rendering legal advice. This type of advice will be of little value to VA when taking actions that could have legal implications. It will also insulate OGC from any level of accountability.

We are issuing this report with the recommendation against the staff attorney unresolved.

The Assistant Secretary for Information and Technology's comments and the Assistant General Counsel's comments are in Appendix A.

*(original signed by Joseph G. Sullivan, Jr.
Deputy Assistant Inspector General for
Investigations for:)*

JAMES J. O'NEILL
Assistant Inspector General for
Investigations

Assistant Secretary for Information and Technology Comments

**Department of
Veterans Affairs**

Memorandum

Date: October 17, 2006

From: Senior Advisor to the Deputy Secretary
Supervisor, Office of Information & Technology (005)

Subject: **Draft Report - Administrative Investigation, Improper
Selection of a Contractor, Austin Automation Center,
Austin, TX**

To: Assistant Inspector General for Investigations (51)

1. The Office of Information and Technology concurs with the findings and the recommended actions.
2. If you have questions concerning this report, please contact me at 202-273-8855.

(original signed by:)
Robert T. Howard

Attachment

Assistant Secretary for Information and Technology's Comments to Office of Inspector General's Report

The following comments are submitted in response to the recommendation(s) in the Office of Inspector General's Report:

OIG Recommendation(s)

Recommended Action(s) 1. We recommend that the Assistant Secretary for Information and Technology take appropriate administrative action against AAC's Head of Contracting Activity for failing to provide proper oversight during the award of this Task Order.

Concur **Target Completion Date:** 11/17/2006

Recommended Action(s) 2. We recommend that the Assistant Secretary for Information and Technology take appropriate administrative action against the responsible contracting officer for failing to properly compete the procurement.

Concur **Target Completion Date:** 11/17/2006

**Department of
Veterans Affairs**

Memorandum

Date: January 23, 2007

From: Assistant General Counsel, Professional Staff Group V (025)

Subject: **Administrative Investigation, Improper Selection of a Contractor, Austin Automation Center, Austin, TX**

To: Assistant Inspector General for Investigations (51)

I can not concur with the administrative action recommended.

See comments below.

Assistant General Counsel's Comments to Office of Inspector General's Report

The following comments are submitted in response to the recommendation(s) in the Office of Inspector General's Report:

OIG Recommendation(s)

Recommended Action(s) 3. We recommend that the Assistant General Counsel, Professional Staff Group V, take appropriate administrative action against the staff attorney for not properly researching a legal matter prior to providing advice.

Do not concur **Target Completion Date:** 02/01/2007

Given the context of the instant matter, administrative action is not appropriate. However, I will advise all attorneys at the next staff meeting that when providing advice, informally or formally, to take care that they provide the client with caveats. Namely, that the answer is based on the specific facts presented and if the client wants an immediate answer, that the answer is without benefit of research, if no research has been done. Often staff attorneys are asked to provide immediate responses; indeed we encourage prompt responses.

OIG Contact and Staff Acknowledgments

OIG Contact	Judy Shelly (202) 565-8617
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Acknowledgments	Linda Fournier
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