



DEPARTMENT OF THE INTERIOR OFFICE OF INSPECTOR GENERAL

MANAGEMENT ADVISORY

U.S. Department of the Interior

**OFFICE OF THE SPECIAL TRUSTEE
FOR AMERICAN INDIANS**



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NATIONAL BUSINESS CENTER

REVIEW OF OFFICE OF THE SPECIAL TRUSTEE

FOR AMERICAN INDIANS REQUISITION

NUMBER 76030070002

Report No.

Q-CX-MOA-0001-2007

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United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, D.C. 20240

JUN 27 2008

Memorandum

To: Secretary Kempthorne

From: Earl E. Devaney
Inspector General 

Subject: Transmittal of Report of Investigation, Audit Report and Management Advisory:
Chavarria, Dunne & Lamey, Office of Special Trustee Contractor

In May 2006, the Office of Inspector General (OIG) issued a Report of Investigation concerning allegations of improper relationships between senior Office of Special Trustee (OST) officials and the principals of Chavarria, Dunne & Lamey (CD&L), a contractor for OST (copy attached). What we found was that over a period of years, OST awarded and continued to extend and expand, without competition, a contract with CD&L for trust fund accounting and risk management services, while the three most senior ranking officials in OST engaged in extensive outside social activity with the executives of CD&L. This activity included the exchange of gifts of meals and drinks, taking out-of-town trips to a major golf event, playing golf together on almost a weekly basis, and exchanging hospitality at personal residences. We also found that OST contract personnel felt pressured by these senior OST officials to continue to award work to CD&L. The appearance of preferential treatment in this case was palpable.

We directed the Report of Investigation to Chief of Staff, Brian Waidmann, for whatever administrative action was deemed appropriate. We also recommended a thorough review of both the performance of the CD&L contracts as well as any pending or future awards to CD&L.

Almost immediately after your arrival as Secretary of the Interior, the Special Trustee issued letters of reprimand (to be retained in the officials' OPF for one year or less) and directed the three senior officials to take some additional ethics training, presumably, without your knowledge.

Since we expected to see little, if any, further action by OST concerning the CD&L contracts, we launched an audit to determine the quality and timeliness of CD&L contract deliverables, and to review sole-source awards to CD&L. While we concluded this audit in April 2007, we suspended the issuance of a report until our investigation into several other allegations of impropriety concerning OST officials and review of CD&L contract awards and deliverables could be completed.

With this memorandum, I am transmitting the Audit Report, Report of Investigation and our Management Advisory (stemming from our review) concerning these various concerns to you.

In short, our audit found that CD&L has been the beneficiary of "time and material" contracts which are so poorly written and monitored that contracting officials were unable to substantiate that deliverables were received. We found one contract in which CD&L was fully paid without providing all deliverables, and we found pervasive irregularities in sole-source contracting.

Our review of the pre-award process for a contract awarded to CD&L revealed that OST did not plan its contract requirements adequately or timely; the National Business Center made errors on the contract; and the contractor incorrectly billed improper labor categories.

Our investigation determined that allegations received in 2006 concerning CD&L's failure to produce required deliverables were unsubstantiated. However, our investigation also revealed that one of the same three senior OST officials continued to improperly influence the award of contracts to CD&L, and a perpetuate pattern of preferential treatment toward CD&L that, if allowed to continue, will ensure that CD&L (and its acquiring company Clifton Gunderson) will continue to win even competitive OST contracts *in perpetuity*, as "past performance" (which applies only to CD&L) is being considered significantly more important than price. In the most recent award, the lower bidder recommended by an evaluation team lost the contract to CD&L (dba Clifton Gunderson) when the recused official urged the evaluation team to reconsider CD&L as a local company and as having experience. It appears that no amount of ethics training will bring about lessons learned when it comes to the relationship of OST officials to this particular contractor.

Considered separately, these individual reports may not warrant severe administrative action. But considered together, the continuous awarding of contracts to CD&L perpetuates permanent preferential treatment and creates an air of impropriety that generates a stream of seemingly endless allegations. Absent meaningful corrective action, the OIG will be continuously called upon to investigate these issues. We cannot continue to dedicate our scarce resources to a problem that rebuffs solution.

Frustrated by a lack of accountability in this regard, I bring these matters to your direct attention and urge you to ensure that appropriate action is taken to rectify the conduct of OST officials and restore the integrity of the OST contracting process.

We would appreciate a written response from the appropriate officials to these reports outlining their intended action, particularly in response to the recommendations contained in the Audit Report, and the suggestions contained in the Management Advisory. We would also like to be advised of any corrective administrative action taken in response to these reports.

If you have any questions regarding any of these reports, please do not hesitate to contact me at (202) 208-5745.

Attachments

WHY WE DID THIS REVIEW

During a previous OIG audit of Chavarria, Dunne & Lamey LLC (CD&L) contracts with various Departmental agencies, we identified potential procurement regulation violations. As a result, OIG began another audit in November 2006 of the award of the Office of Special Trustee's (OST) contract against requisition number 76030070002, and OIG investigators started an investigation into alleged violations of procurement regulations and standards of ethical conduct by OST officials. By April 2007, we had identified additional potential violations that we referred to OIG Investigations. In June 2007, we terminated the audit to avoid interfering with the ongoing investigation. Prior to terminating the audit, however, we observed deficiencies in the contract award process that did not warrant investigation, but are worthy of management's attention. This advisory report provides those observations and related suggestions for avoiding similar mistakes in the future.

BACKGROUND ON OST CONTRACTING

The American Indian Trust Fund Management Reform Act of 1994 (Public Law 103-412) created OST to improve the accountability and management of Indian funds held in trust by the U.S. Government. OST has used contractors to perform many of its trust reform activities. In fiscal years 2004 and 2005, OST allocated approximately \$89.7 million, or nearly 21 percent, of its appropriated funds to contracting. OST has relied upon the National Business Center (NBC) to award and manage many of its contracts since October 1, 2003.

WHAT WE FOUND

We found that OST failed to plan its requirements adequately or on a timely basis. As a result, NBC made several errors during the award process due to short time frames. In addition, we found that the contractor incorrectly billed in labor categories not authorized by the contract.

INADEQUATE PLANNING OST did not adequately plan what services and/or deliverables to require of the contract and/or contractor. Specifically, despite having risk management services contracts in place for almost 6 years, OST did not clearly define what it wanted from the contractor in either the requisition or initial statement of work (SOW). As a result, the:

- SOW was not finalized until January 11, 2007, more than a month after the request for quote (RFQ) was posted for contractor bidding;
- Six modifications had to be made to the RFQ to clarify incomplete or unclear requirements, which extended the final bid due date from January 3, 2007, to January 23, 2007. This contributed to the sole-source award discussed below; and

- Only 5 tasks were ultimately funded by OST,¹ while the SOW and awarded contract had 10 tasks. Additional bidders may have competed had they known the actual magnitude of the contract's requirement. As a result, NBC expended a considerable amount of effort contracting for unnecessary and unused tasks.

UNTIMELY PLANNING OST did not plan its requirements on a timely basis. Specifically, OST was receiving risk management services under contract SMK00050058. In August 2006, OST was informed that the contract would expire on December 31, 2006. However, OST did not submit requisition 76030070002 to NBC, requesting a new risk management services contract be awarded, until October 31, 2006. This left NBC only 2 months (versus the standard 90 days) to plan, compete, and award the replacement contract. As a result of this short time frame:

- A stop-gap sole-source contract for the initial task, a draft 3-year test plan, had to be awarded to meet an Office of Financial Management-mandated due date of January 30, 2007. OST could not wait for the full procurement award. The sole source justification indicated the cause for the sole-source award was 1) severe winter weather resulting in Government office closures, 2) this review², and 3) serious issues with the SOW. Had OST submitted the request for the replacement contract on a timely basis, these events would not have delayed the process significantly enough to require a sole-source award.
- Clifton Gunderson, the company that was awarded the replacement contract, received an unfair advantage. Specifically, one of the two justifications for selection was that Clifton Gunderson could have staff on-site quickly, since it was partnering with the prior contractor CD&L. The ability to provide staff quickly was critical due to the award delays and short, critical delivery timelines. However, had OST acted sooner in requesting the replacement contract, the other bidder would have had time to get staff on-site and up-to-speed before the prior contract expired.

WHAT OST SHOULD DO:

OST should coordinate requisition requirements with NBC and carefully consider the amount of time that 1) NBC reasonably needs to perform pre-award activities and that 2) contractors need to perform pre-work requirements, such as obtaining security clearances.

ERRORS NBC made several errors during the award process, primarily because OST gave NBC inadequate time to plan, compete, and award the contract. NBC issued the RFQ on December 1, 2006, in a third of the normal time. The RFQ was based on OST's requisition dated October 31, 2006, and updated SOW dated November 30, 2006. As a result of rushing the process, NBC:

¹Per the NBC contracting officer, the contract is essentially closed and no additional tasks will be performed.

²The OIG review actually identified significant deficiencies including missing contractor oversight plans and weaknesses in the SOW. As a result, at OIG's suggestion, the Government held a pre-award conference that identified even more serious questions about the SOW that necessitated revisions to the RFQ.

- Accepted minimal documentation from the Technical Evaluation Panel in support of both its technical scores and evaluation of effort;
- Documented poorly the justification for converting four tasks from fixed-price to labor-hour;
- Failed to notice that Clifton Gunderson used labor categories and hourly rates in the wrong General Services Administration (GSA) Mission Oriented Business Integrated Services (MOBIS) contract; and
- Left the hourly rates out of the awarded contract.

INCORRECT BILLING During the course of the contract, Clifton Gunderson billed in unauthorized labor categories. Despite these incorrect labor categories, the contracting officer's technical representative approved the invoice for payment.

In addition, review of the contractor's GSA MOBIS contract containing its standard labor categories and billing rates disclosed that the inappropriately billed labor categories were not authorized in that contract either. Therefore, we were unable to determine what the standard hourly rates were for the incorrectly billed labor categories. As a result, there is no assurance that the Government was not over-charged for work performed in the unauthorized labor categories.

WHAT NBC SHOULD DO:

NBC should 1) establish checklists (for both contracting officers and reviewing officials) to ensure all required steps are taken and administrative activities are completed and 2) determine whether Clifton Gunderson should reimburse the Government for working in unauthorized labor categories and, if so, seek reimbursement.

SCOPE AND METHODOLOGY

This review was limited to award of OST requisition number 76030070002, and we:

- Gained an understanding of applicable regulations including the:
 - ✦ Federal Acquisition Regulation,
 - ✦ Department of the Interior Acquisition Regulation, and
 - ✦ NBC Acquisition Guide;
- Tested to validate compliance with applicable regulations;
- Gained an understanding of internal controls over the pre-award process and performed the following tests to ensure they were followed:
 - ✦ Standard documents were properly prepared at appropriate phases,
 - ✦ Supervisory and legal reviews were conducted at appropriate phases, and
 - ✦ Technical evaluation panel members were independent,
- Interviewed, in coordination with OIG Investigations, the NBC contracting officer (we also provided to OIG Investigations interview questions for OST and other key officials involved in the pre-award process); and
- Reviewed all documents generated by NBC and OST during the pre-award process.

We performed this review in accordance with the “Government Auditing Standards” issued by the Comptroller General of the United States. Work was performed from November 2006 to April 2008 and was suspended from:

- December 2006 to February 2007 — during the evaluation of proposals and contract award to ensure they were not unduly influenced by the audit and
- June 2007 to March 2008 — during the OIG investigation.

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