

**The Library of Congress**  
**Office of the Inspector General**



***Contracts Services***  
***Congressional Research Service***  
***Office of the General Counsel***

***Consulting Contracts: More  
Competition, Cost Analysis, and  
Administrative Compliance Needed***

*Audit Report No. 2000-INA-LCWD-004*

*September 2002*



**Memorandum***Office of the Inspector General*

TO: James H. Billington  
Librarian of Congress

September 30, 2002

FROM: Karl W. Schornagel  
Inspector General



SUBJECT: *Consulting Contracts: More Competition, Cost  
Analysis, and Administrative Compliance Needed*  
Audit Report No. 2000-INA-LCWD-004

This transmits our final audit report on the Library's use of consulting contracts. Recommendations in the report apply to the Congressional Research Service (CRS), Integrated Support Services (ISS), the Office of General Counsel (OGC), and the Financial Services Directorate (FSD). Recommendations I, II A, III A & B, V A & C, and VI pertain to CRS; recommendations V A & B, VI, VII B & C, and VIII B through XII pertain to ISS; recommendations II B, VII A & B, and VIII A pertain to OGC, and recommendations VII A pertain to FSD.

CRS, ISS, OGC, and FSD responses are briefly summarized in the Executive Summary beginning on page i, and in more detail after individual recommendations beginning on page 6. CRS, OGC and FSD's complete responses are included as Appendixes D, E, and F respectively. ISS did not provide a written response to the draft report; however, we summarized its verbal comments and a February 5, 2001 written response from the former Chief of Contracts Services. The later response addressed some of our preliminary findings and recommendations.

We request that CRS, ISS and OGC provide an action plan addressing implementation of the recommendations, including implementation dates, within 90 calendar days in accordance with LCR 1519-1, Section 4.B. The action plans should address only those recommendations that have not been fully implemented.

We appreciate the cooperation and courtesies extended by CRS, ISS, OGC, and FSD staff during the audit.

cc: Deputy Librarian of Congress  
Director, Congressional Research Service  
Director, Integrated Support Services  
Director, Financial Services Directorate  
General Counsel  
Acting Head of Contracts Services

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## **EXECUTIVE SUMMARY**

The Library of Congress uses consultants for a wide range of assistance, such as technical presentations, information technology support, and business assessments. Reliance on consultants has increased significantly in recent years. From FY 1999 to FY 2001, the value of consulting contracts increased 30 percent, from \$6.2 million to \$8.1 million annually. The Library voluntarily follows the Federal Acquisition Regulation (FAR) in the acquisition of supplies and services. However, the Congressional Research Service (CRS) is exempt from following the FAR for contracts within its statutory procurement authority.

The objective of our audit was to determine whether Contracts Services and CRS's consulting contracts are cost effective and comply with regulations. We found that in many instances, consulting contracts are not cost effective and do not comply with regulations. We found consistent trends of limited or no competition, insufficient cost analysis, and inadequate sole source justifications. Specifically, we found insufficient competition in 65 percent of the contracts we sampled and inadequate cost analysis in 73 percent of the contracts. Eighty-two percent of the sampled contracts were sole source. We found little evidence that contracting staff negotiate overhead or profit rates. Collectively, these conditions show that the Library is not focused on obtaining best value for its contracting expenditures. Our conclusion is especially relevant to Contracts Services because it awards the vast majority of the Library's contracts and the majority of our findings relate to its activities. The following paragraphs highlight the individual issues addressed in this report.

CRS has statutory authority to procure temporary expert and consultant services noncompetitively, and it awarded multiple consecutive sole source contracts to the same vendor for computer support and training. We interpret CRS's exemption from competition to apply only to services to directly support Congressional needs such as research or studies, and we question the temporary classification of the contracts. We recommend that CRS reconsider its classification of computer support and training and refer these service needs to Contracts Services for competitive selection.

All five project managers on sampled CRS contracts need training for performing important duties as Contracting Officer's Technical Representatives (COTR). These COTRs play an important role in ensuring quality contractor performance. Also, CRS files contained insufficient documentation explaining how cost and pricing were determined, or why specified profit and overhead rates were accepted. CRS could be vulnerable in the event of protests without this documentation, and pay too much for its services.

CRS does not have written contracting policies and procedures for (a) contract administration, (b) personal and organizational conflicts of interest, (c) government property, (d) record retention, (e) quality assurance, and (f) acquisition planning. These are important controls to ensure the integrity of the acquisition process. Although CRS is not required to follow the FAR,

it should identify those uniform FAR controls that are relevant to CRS operations and incorporate them into its internal contracting policies.

CRS and Contracts Services could obtain significant savings by identifying high-risk cost elements and contracts and performing cost analyses. We found insufficient pre-award cost analyses on 16 of 22 sampled contracts. We also found that debarment lists are not checked prior to awarding contracts. We recommend that CRS and Contracts Services train their contracting officers to perform these analyses and check debarment lists prior to awarding contracts.

Three sole source justifications processed by Contracts Services are not in compliance with FAR Part 6.301(c)(1). The justifications cite lack of time for competition as the basis for sole source award. By the explicit terms of the FAR, lack of advanced planning is not an acceptable justification for contracting without providing for full and open competition. Noncompetitive contract awards adversely affect the Library's ability to obtain the best value on goods and services. The Library may also be vulnerable to protests from other contractors who were excluded from competing for the contracts. We recommend that Contracts Service's contracting officers review sole source justifications and return those that are not in compliance, and issue a memorandum to service units specifically stating the criteria for using sole source contracts. We found that Contracts Services issued one contract to a current Library employee, raising a conflict of interest issue. We recommend employment certification before contracts are awarded.

We found no indication that Contracts Services acts to enhance consultant competition. Eleven out of 17 of its consultant contracts were sole source with no indication of competition. The Library's policies are inconsistent concerning competition for consultants who perform in person. The Acting Head of Contracts Services believes that competition is not required when contracting with individuals. However, internal Contracts Services operating instructions require competition when other sources are available. LCR 1514-3 is not clear as to when competition is required. There is, however, agreement that competition is required when companies are engaged as consultants and other sources are available.

Extensive use of noncompetitive contracts diminishes the Library's ability to obtain the best value for goods and services and can give the appearance of bias and favoritism in the contracting process. We added a new recommendation not contained in our draft report, that the Library's Office of the General Counsel (OGC) rewrite LCR 1514-3 to clarify the competition requirements for consultants; and when required, Contracts Services foster greater competition through market research and outreach efforts as prescribed in FAR 10.002 (b)(2).

Contracts Services has excessive signature requirements that slow down the procurement process and delay the delivery of goods and services. Financial Services Directorate's (FSD) approval adds no benefit on consulting contracts and we recommend that it be discontinued. OGC approval for consulting contracts under \$25,000 also adds little if any benefit and should be

discontinued. Contracts Services and OGC should develop written procedures for OGC's approval role for larger contracts.

Finally, Contracts Services should avoid "contract splitting" to stay under review/approval thresholds and ensure that contract requests are supported by adequate statements of work. We also recommend use of alternative contracting vehicles such as blanket purchase agreements and indefinite delivery indefinite quantity contracts to improve the efficiency and flexibility of its contracting operations.

We conducted exit conferences with CRS on December 17, 2001, OGC on February 5, 2002, and Contracts Services on April 23, 2002. CRS and OGC agree with all our findings and recommendations except for our interpretation of CRS's statutory contracting authority. FSD concurs. Contracts Services did not respond in writing to our draft audit report. However, the former Chief of Contracts and Logistics, in a February 2001 letter, generally concurred with our preliminary findings and recommendations. We have included in this report a summary of a recent verbal response from the Acting Head of Contracts Services concerning findings VIII and IX. For all other findings, we have provided comments based on the February 2001 response. A complete list of our recommendations is included as Appendix A.

## **INTRODUCTION**

In recent years, the federal government has significantly changed how it buys goods and services. In particular, the process has become more streamlined as new contract vehicles and techniques have allowed agencies to buy what they need faster than in the past. These streamlined policies have become incorporated into the Federal Acquisition Regulation (FAR). The vision for the FAR is to deliver, on a timely basis, the best value product or service to the customer, while maintaining the public's trust and fulfilling public policy objectives. LCR 1614-2 states that it is the policy of the Library to follow the FAR in the acquisition of supplies and services. When exercising its direct statutory procurement authority, the Congressional Research Service (CRS) is not legally required to follow the FAR and therefore does not adhere to the LCRs that address contracting.

LCR 1514-3, *Engagement of Consultants and Experts as Contractors for Delivery of a Specific Article or Service*, covers individuals contracted by the Library on a nonpersonal basis and requires completion of form 52. Based on the contract dollar value, form 52 has various management approvals that must be signed prior to award. LCR 1614-2, *Acquisition of Supplies and Services*, addresses companies under contract to perform consulting services and provides certain Library officers contracting authority to award and process contracts independently of Contracts Services.

The contracting officer is the Library's sole agent with the authority to award, administer, and terminate contracts. The contracting officer is required to ensure that all requirements of law, regulations, and other applicable requirements are met. The Contracting Officer's Technical Representative (COTR) is delegated authority by the contracting officer to monitor the technical performance of the contractor and ensure compliance with contractual terms. The Office of the General Counsel (OGC) provides overall legal assistance, such as procurement law and ethics guidance, to contracting officers to assist them in the execution of their respective duties.

Contracts Services has a Contract Review Board (CRB), separate from CRS, that consists of a minimum of four members who approve high dollar contract actions. Once approved, the CRB case file is submitted to OGC for legal review.

In FY 2002 Contracts Services created the Procurement System Advisory Group (PSAG). The PSAG is a forum for professionals in various disciplines within the Library of Congress to share their collective knowledge to achieve improved customer service and efficiencies through the Library's procurement system. Contracts Services has internal operating instructions and in January 1999, it published the Acquisition Alerts Handbook. The purpose of the Handbook is to assist in the prevention of problems during the acquisition process.

CRS's statutory authority for direct procurement derives from the Legislative Reorganization Act of 1970<sup>1</sup>, 2 U.S.C. § 166(h), which provides:

- (h)(1) The Director of the Congressional Research Service may procure the temporary or intermittent assistance of individual experts or consultants (including stenographic reporters) and of persons learned in particular or specialized fields of knowledge –
  - (A) By nonpersonal service contract, without regard to any provision of law requiring advertising for contract bids, with the individual expert, consultant, or other person concerned as an independent contractor, for the furnishing by him to the Congressional Research Service of a written study, treatise, theme, discourse, dissertation, thesis, summary, advisory opinion, or other end product;<sup>2</sup>
- (h)(2) The Director of the Congressional Research Service may procure by contract, without regard to any provision of law requiring advertising for contract bids, the temporary (for respective periods not in excess of one year) or intermittent assistance of educational, research or other organizations of experts and consultants (including stenographic reporters) and of educational, research, and other organizations of persons learned in particular or specialized fields of knowledge.

CRS's contracting policies are its *Guidelines for External Research Contracting*. The Guidelines, dated March 1999 and revised in June 2001, include information on CRB membership and member responsibilities, price negotiation, project manager responsibilities, and other general information. Attachment A to the guideline, Request for External Research Support, contains contract-related questions that are completed by the project manager and presented to the CRS CRB for approval prior to award.

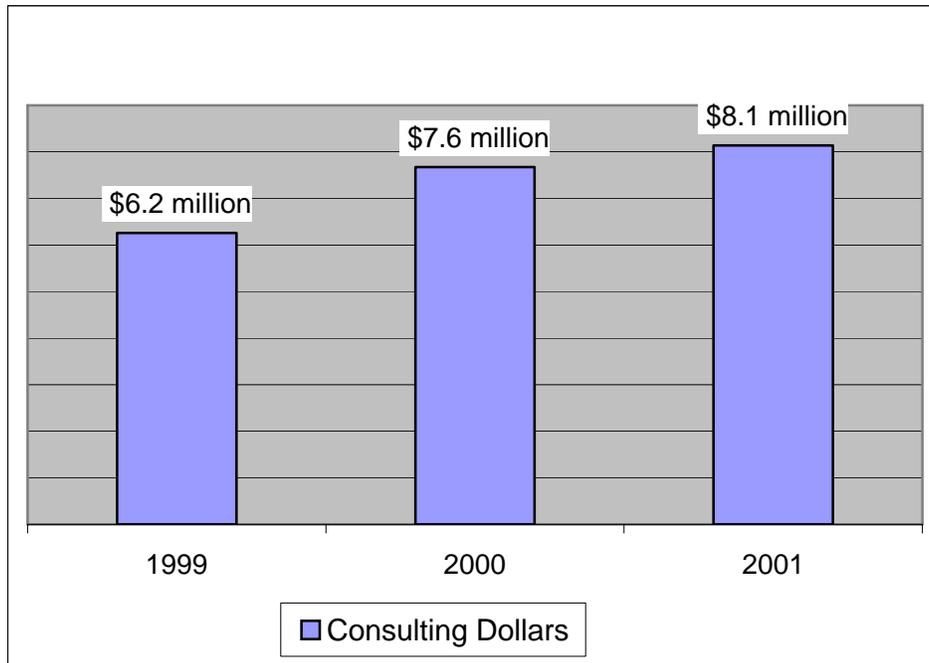
Approximately 250 Library employees request a variety of procurement actions. The Library maintains a universe of about 14,000 contractors to fulfill employee requests, although many of these sources are inactive. The types of consulting services required range from providing one-day presentations to providing software, maintenance, and technical support for the Library's financial management system. The reliance on consultants to fulfill the Library's mission increased by 30 percent from FY 1999 expenses of \$6.2 million to \$8.1 million in FY 2001 as illustrated in Table 1.

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<sup>1</sup> Legislative Reorganization Act of 1970, Public Law 91-510, 84 Stat. 1140, 1380.

<sup>2</sup> Paragraph (h)(1) B authorizes personal services contracts, which were not the subject of this audit.

**Table 1. Library Consulting Activity**



### OBJECTIVES, SCOPE, AND METHODOLOGY

The audit objectives were to determine whether the Library's consulting contracts were cost effective and complied with regulations. We reviewed contracts awarded from October 1, 1998 to May 31, 2000. Specific audit steps included:

- Reviewing contract files to evaluate statements of work, contract modifications, proposals, miscellaneous consultant correspondence, and final contract documentation;
- Reviewing consultant work products;
- Interviewing Library staff including contracting officers; COTRs; and representatives from Contracts Services, Financial Services Directorate (FSD), OGC, and CRS;
- Evaluating the source selection process;
- Reviewing CRS and Contracts Services internal contracting policies;
- Interviewing contracting representatives from the General Accounting Office and the Office of Personnel Management; and
- Reviewing personnel files of consultants who were former Library employees.

We included as our audit universe all consultant payments disbursed from accounting object class 2550 from October 1, 1998 to May 31, 2000. We judgmentally selected 7 contracts that exceeded \$300,000 and statistically sampled 31 other contracts which exceeded \$1,000 in value; however, this amount was later judgmentally reduced to 15 contracts, based on the consistency and uniformity of our findings through the initial reviews. These 22 contracts accounted for

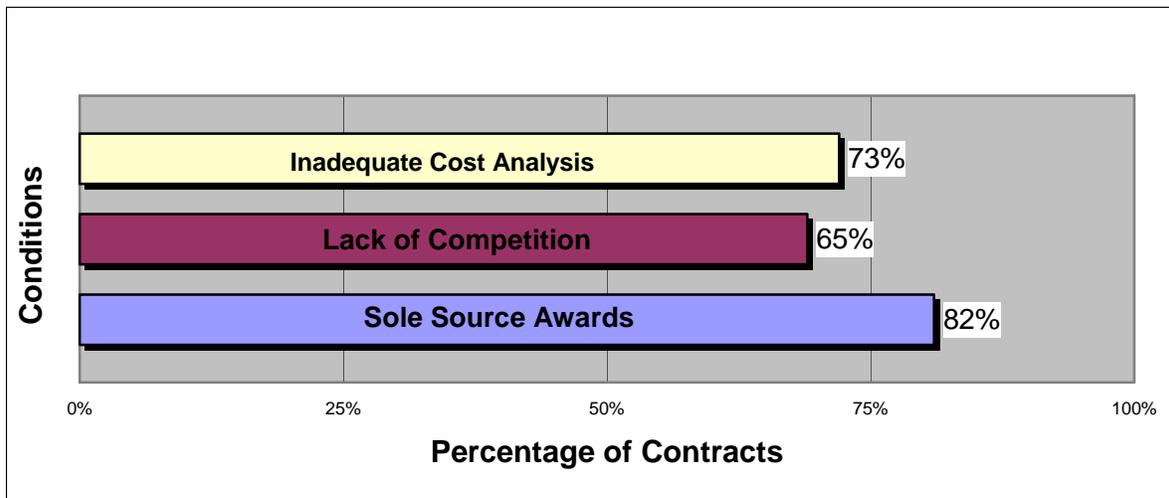
\$3,311,590 in consulting contracts. See Appendix C for a list of audited contracts. In addition, we judgmentally sampled former Library employees to evaluate the appropriateness of using these individuals as consultants.

Our fieldwork was performed from September 2000 to March 2001. The fieldwork was interrupted while we awaited an opinion from OGC regarding CRS's contracting authority and compliance with the FAR, and due to workload demands of our office. Additional fieldwork was performed in November 2001 and April 2002 to ensure the original findings and recommendations were current and relevant. The audit was conducted in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States and LCR 1519-1, *Audits and Reviews by the Office of the Inspector General*, October 18, 1999.

## FINDINGS AND RECOMMENDATIONS

In many cases, the Library's consulting contracts are not cost effective and do not comply with regulations. Table 2 illustrates that there is insufficient cost analysis, limited competition, and excessive use of sole source contracts in obtaining consulting services. We found little evidence that overhead and profit rates are negotiated. Collectively, these conditions show that the Library is not committed to obtaining best value for its consultant contracting expenditures. These conditions are especially prevalent in Contracts Services, where the majority of contract actions are processed.

**Table 2. Sampled Consulting Contracts**



We found that contracts awarded by Contracts Services could be expedited by eliminating excessive signature requirements that slow down the procurement process and delay the delivery of goods and services. Contracts Services also awards contracts without reviewing debarment lists. In addition, Contracts Services does not require adequate sole source justifications and statements of work. Further, Contracts Services does not utilize alternative contract vehicles to avoid contract splitting, and in one case, awarded a contract to a current employee. We found that CRS needs to expand its contracting policies, generate additional contract negotiation documentation, train its COTRs, check debarment lists, and refer certain acquisitions to Contracts Services.

### **I. CRS Acquisitions, Except for Experts and Consultants, Should Be Referred to Contracts Services**

CRS's statutory authority permits noncompetitive acquisitions for experts and consultants on a temporary basis. We believe CRS exercised a broad interpretation of the statute in awarding noncompetitive contracts for computer support and training. The contracts included indirect

generic information technology services and training support. The services included training; one on one employee consultations on WordPerfect, Quattro Pro, and Corel; troubleshooting; providing technical assistance; arranging for outside repair of computers, monitors, and printers; a new employee consultation on the differences between Word and WordPerfect; and supporting the CRS relocation project, including the scheduling and timing of employee office moves. These tasks represent routine information technology support that should be contracted through Contracts Services.

CRS awarded the same contractor at least three consecutive contracts for almost one year each, therefore, we also question their temporary classification. The first two, valued at \$391,778 and \$448,960 respectively, were awarded without competition. The most recent contract was awarded competitively. CRS also awarded, without competition, three consecutive consulting contracts to a former employee valued at \$79,684, \$68,000 and \$72,200. Although these contracts had an approximate one-month break between awards and did not technically violate the “intermittent” requirement, they could be viewed as other than temporary.

Our interpretation of 2 U.S.C. § 166(h), CRS’s exclusive authority for contracting, is that the exemption from competition is intended for services that would be used directly to support Congressional needs such as research or studies. On January 18, 2001, we requested a legal opinion from OGC on this matter. On November 7, 2001, OGC responded that it does not believe CRS exceeded the scope of its statutory authority under 2 U.S.C. § 166 (h)(2). OGC stated that because the terms “expert,” “consultant,” or “persons learned in specialized fields of knowledge” are not defined in the CRS statute, legislative history or other applicable sections of U.S. Code, it cannot conclude that organizations of persons learned in computer technology are outside the scope of the statute. CRS maintains that the intent of 2 U.S.C. § 166 is to permit the flexibility to quickly support Congress, and interprets the computer support and training contract as a mechanism to support its research capacity and therefore facilitate its Congressional support.

CRS may not have obtained the best price or value on these contracts and others due to the lack of competition. Additionally, opportunities for volume purchase discounts exist when procurements are combined with other Library-wide procurements. Finally, the appearance of favoritism exists when consecutive sole source contracts are awarded to the same contractor.

### **Recommendation**

CRS should use Contracts Services to procure all contracts except for temporary or intermittent consultants or experts.

### **CRS Response and OIG Comments**

CRS does not concur with the OIG interpretation that its statutory exemption from competition is intended for services that would be used directly to support Congressional needs such as research or studies. CRS’s response is based on OGC’s legal opinion that concluded the contracts in

question were within the scope of CRS's direct procurement authority. OGC stated, "While it may be intuitively reasonable to infer that the intent of the CRS statute is to provide maximum flexibility to acquire assistance from policy experts on substantive matters to supplement the capabilities of the Service's permanent staff, the language of the statute is not this restrictive." OGC concluded that organizations of persons learned in computer technology are not outside the scope of the statute. CRS adds that per LCR 211-10, OGC is the final legal advisor for all Library matters and the final report should be revised to conform to OGC's conclusion.

We disagree with the OGC opinion. Although the statute does not define the terms "expert," "consultant," or "persons learned in specialized fields of knowledge" we do not believe the statute should exclude CRS from obtaining competition for widely available and routine support services such as off-the-shelf computer applications and associated training.

OGC was not initially asked to provide an opinion on whether the contracts in question comply with the statute regarding the "temporary" requirements. However, based on subsequent questions from our office, the OGC opinion stated, "If CRS had a requirement for long term support from an individual or organization that would be satisfied by letting a contract for a period in excess of one year, it would not be within the scope of CRS's statutory authority. Such a requirement would have to be procured through the Library's regular competitive contracting procedures." As stated above, CRS awarded consecutive contracts to an individual and an organization that have been in place for several years. CRS responded that it is mindful of the requirement and will continue to exercise vigilance in the conduct of its contract authority.

CRS agreed that there may be opportunities for volume discounts when combining procurements with the Library and it will pursue these opportunities when they have shared requirements.

## **II. CRS Contracting Policies and Procedures Need Expanding**

CRS does not have written contracting policies and procedures for (a) contract administration, (b) personal and organizational conflicts of interest, (c) government property, (d) record retention, (e) quality assurance, and (f) acquisition planning. In the contract administration area, the policies do not address contract modifications, terminations, subcontracting restrictions, and pricing. The policies do not address the use of Library property such as computers and office space. The Guidelines are silent on the establishment, maintenance, and disposal of CRS contract files and the contractor's record retention requirements.

Although CRS is not required to comply with the FAR, LCR 1614-2 does not mention the exclusion. Even though the exclusion exists, the FAR contains many important controls to ensure the integrity of the acquisition process that should be incorporated into CRS's policies. Without these policies, there is little assurance employees are performing contracting tasks in a manner consistent with management's intent for internal controls.

The *Standards for Internal Controls in the Federal Government* (GAO/AIMD-00-21.3.1), November 1999 states: “Internal controls and all transactions and other significant events need to be clearly documented, and the documentation should be readily available for examination. The documentation should appear in management directives, administrative policies, or operating manuals and may be in paper or electronic form. All documentation and records should be properly managed and maintained.”

Two senior CRS officials with extensive knowledge of CRS procurements recently retired. The need for written policies and procedures is more pronounced without these individuals.

### **Recommendations**

- A. CRS should expand its current contract Guidelines to include policy on important acquisition controls for awarding, administering, and terminating contracts as detailed in Finding II. The FAR should be used to identify specific procedures that are relevant to CRS operations.
- B. OGC should revise LCR 1614-2 to clarify that CRS is exempt from following the FAR for contracts within CRS statutory procurement authority.

### **CRS and OGC Responses and OIG Comments**

CRS and OGC concur with the recommendations. CRS will develop more comprehensive internal guidelines and has begun to review the FAR to identify specific procedures that are relevant to its operations. OGC has revised LCR 1614-2 to clarify that the policy does not apply to CRS for procurements under its statutory authority.

### **III. CRS Should Train Its COTRs**

None of the five CRS project managers who served as COTRs on our sampled contracts attended the Library’s COTR training course. Although the Library’s COTR training does not focus on the CRS contracting environment, it provides basic information on COTR duties and responsibilities. Attachment C to CRS’s contract Guidelines, Designation of CRS Project Manager, defines project manager responsibilities and includes specific duties and tasks. However, this form was not provided to the project managers who served as COTRs. Without this guidance, COTRs may not recognize when additional contractor services/tasks are needed; properly review and evaluate contractor performance; document, retain, and forward pertinent records to a successor COTR or contract specialist; and notify contracting officers of unauthorized contractor actions.

Based on our oral recommendation during our review, CRS revised Attachment C to the Guidelines. The attachment has been put in letter format and includes additional guidance. The new attachment requires project manager and contract specialist signatures prior to contract award.

### **Recommendations**

- A. CRS should train its COTRs.
- B. CRS contract specialist and COTR signatures should be required on Attachment C prior to all contract awards.

### **CRS Response and OIG Comments**

CRS concurs with the recommendation and will develop an in-house training module that includes OIG input in the course outline development. CRS also implemented the signatures requirement on Attachment C prior to contract award.

### **IV. CRS Should Document Contract Negotiations**

The five CRS contract files we reviewed did not contain sufficient documentation of the negotiations. The files contained no documentation or correspondence explaining how the final cost and pricing was determined or the positions taken by the consultants/contractors or the Library. On a CRS computer support contract, there was no documentation explaining why different profit rates were applied to different contract tasks. On another contract, the contract specialist could not explain why an eight percent overhead rate was given to a former employee as an independent consultant and other consultants in similar circumstances received different rates.

CRS could be vulnerable without this documentation in the event of a protest. Also, valuable cost and pricing information that could be used in subsequent contracts would not be available. This lack of information could result in CRS being at a competitive disadvantage with future contracts and consequently paying more for consulting services.

According to the contract specialist, her predecessor always maintained the contract files in this manner and she was following the model. Based on the recommendations provided at the exit conference, the contract specialist has begun to document the contract file with the principal elements of the negotiated agreement.

## Recommendation

CRS should institute a policy requiring the contracting officer and contract specialist to document the contract file with the principal elements of negotiated agreements.

## CRS Response and OIG Comments

CRS concurs with the recommendation.

## V. CRS and Contracts Services Could Realize Savings By Analyzing Cost Proposals

CRS and Contracts Services did not perform sufficient pre-award cost analyses on 16 of 22 sampled consulting contracts. On a sole source contract valued at [REDACTED], CRS paid an overhead rate of 54.98 percent. The Defense Contract Audit Agency performed an unrelated audit of this contractor prior to the award and recommended an overhead rate of 37 percent. Additionally, the negotiated rate with this firm was 40.5 percent on the two previous contracts. There was no record of any analysis of this potentially inflated overhead rate.

The contract award justification contained incorrect information that may have been relied on by the Contract Review Board. The justification states that the contractor's costs were based on rates from the previous contract in which its costs were clearly the lowest among several bidders. However, the previous contract was not competitive. There was an even earlier competitive contract, but the vendor was not the lowest bidder. The apparent cause for accepting the increased overhead rate without any analysis was that another firm purchased the contractor prior to the award and the rate may have increased under the new company. Regardless, the rate should have been negotiated. Overhead rates are often reduced as a result of negotiation.

On a Contracts Services sole source contract valued at [REDACTED], there was no travel or fringe benefit analysis. Also, the overhead rate was applied to student assistants on the contract modification, however, the base contract did not include this additional cost. The contracting officer did not ask any questions or challenge any cost elements in the proposal. On the student assistants alone, this may have resulted in savings of \$6,041. Although this amount does not seem to be significant, it represents the potential savings on only one cost element in the contract. CRS and Contracts Services could obtain significant savings if they would identify those high risk cost elements and contracts and perform cost analyses.

FAR Part 15.404.1 (c) defines cost analysis as the review and evaluation of the separate cost elements and profit in an offeror's or contractor's proposal (including cost or pricing data or information other than cost or pricing data), and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency. FAR Part 15.402 states: "The contracting officer should use every

means available to ascertain whether a fair and reasonable price can be determined before requesting cost or pricing data.”

Although CRS recently provided contract pricing training to its contract specialist, its Guidelines do not require cost analyses to be performed. Attachment A to its Guidelines includes general questions regarding cost, however, none of the questions address cost analyses or indirect overhead rate reviews.

### **Recommendations**

- A. CRS and Contracts Services should develop and implement policies that require sufficient cost analysis.
- B. Contracts Services should train its contracting officials on the requirements and guidance to perform these analyses.
- C. CRS contracting officials should obtain outside sources when needed to perform cost and pricing audits such as the Office of the Inspector General and the Defense Contract Audit Agency.

### **CRS and Contracts Services Responses and OIG Comments**

CRS concurs with the recommendations and provided cost analysis training to its contract specialist. CRS states that cost analyses are performed to determine that the overall price is reasonable. The analyses include comparing proposed prices to prior contracts, GSA rates, and its knowledge of the market. We believe the training is a step in the right direction, however, we don't believe the prior analyses alone suffice for cost analyses. CRS's knowledge of market prices is limited due to the small number of contracts awarded. We believe the GSA internet check may provide a very general estimate of labor rates; however, without a proposal from competing firms, it may not be comparable to the CRS contract. The analyses that were performed, particularly in a sole source environment, cannot be exclusively relied upon and detailed cost analysis may be required.

The former Chief of Contracts and Logistics (C&L) did not concur with the recommendation because relevant training was provided in 1999 and the CRB procedures contain a step-by-step guide for conducting cost analyses. We agree that the 1999 training course was a step in the right direction; however, the CRB procedures do not contain any information on how to conduct cost analyses. We maintain that the cost analyses are not taking place and contracting officers need more training in this area.

## **VI. CRS and Contracts Services Should Check Debarment Lists Prior To Awarding Contracts**

The Library is at risk of awarding contracts to unscrupulous or dishonest consultants because CRS and Contracts Services contracting officers do not check debarment listings prior to awarding contracts. LCR 1630 states “After the opening of bids or receipt of proposals, the contracting or granting officer shall review the “Library of Congress List of Those Excluded From Procurement Programs,” as well as the government-wide list maintained by the General Services Administration (GSA).” Additionally, it states, “Immediately prior to award, the Contracting or Granting Officer shall again review the lists to ensure that no award is made to a listed contractor.” The GSA debarment list provides a single comprehensive listing of consolidated business firms and individuals debarred, suspended, or otherwise excluded by government agencies from receiving federal contracts.

Library contracting officers were unaware of the requirement to check the debarment listings. Based on our audit recommendations, CRS and Contracts Services have begun to check debarment lists prior to contract award.

### **Recommendation**

CRS and Contracts Services should check GSA debarment lists prior to awarding contracts.

### **CRS and Contracts Services Responses and OIG Comments**

CRS and Contracts Services concur with the recommendation and are now checking the debarment lists.

## **VII. Contracts Services’ Approval Process Needs Streamlining**

Contracts Services has excessive signature requirements that slow down the procurement process and delay the delivery of services within the Library and ultimately to the public. The completion of form 52 “*Recommendation for Engagement of Consultant or Expert as Contractor*” is required on individual consulting contracts. Form 52 must be signed by the Division Chief, Service Unit Head, Director of Financial Services or Budget Officer, General Counsel, and Contracting Officer.

LCR 1514-3 “*Engagement of Consultants and Experts as Contractors for Delivery of a Specific Article or Service*” requires form 52 to be certified by FSD as to the availability and proper use of funds for all consultant contracts. We believe FSD approval adds no benefit or value on consulting contracts of any amount. The approval was initiated to ensure the availability of funds prior to contract award. FSD’s approval authority has been a long-standing requirement and LCR 1514-3 apparently has not been reviewed since the Library upgraded its financial

management systems. Financial system upgrades have provided the Library service units the ability to review the availability of funds themselves prior to awarding contracts.

LCR 1514-3 and LCR 1614-2 “*Acquisition of Supplies and Services*” require the concurrence of OGC for consulting contracts in excess of \$25,000 and \$50,000 respectively. Under current practice, however, OGC review is sought on consultant contracts at all levels. The OGC approval for consulting contracts under \$25,000 adds little if any benefit or value and is not required by the LCRs. There is also an apparent misunderstanding between OGC and Contracts Services regarding the purpose of the OGC review. Contracts Services believes that OGC is performing a “legal sufficiency” review and ensuring compliance with the post employment restrictions of former employees. However, OGC is not reviewing the contracts for compliance with the post employment restrictions, but rather, is performing informal cost analyses on some contracts. Cost analyses are the contracting officer’s responsibility.

### **Recommendations**

- A. OGC should revise LCR 1514-3 eliminating the requirement for the Director of FSD or the Budget Officer to approve consulting contracts.
- B. Contracts Services should revise form 52 and discontinue OGC approval for consulting contracts under \$25,000.
- C. Contracts Services and OGC should define and document the scope of the OGC consulting contract reviews.

### **Contracts Services, OGC and FSD Responses and OIG Comments**

OGC and FSD concur with the recommendation to revise LCR 1514-3 and eliminate the FSD approval requirement. The former Chief of C&L concurred with the recommendations to revise form 52 and document the scope of OGC reviews. OGC concurs with the recommendation to document the scope of OGC consulting contract reviews.

### **VIII. Contracts Services Could Obtain Better Value By Competing Consulting Contracts**

We found no indication that Contracts Services enhanced competition by conducting outreach or market research activities to identify alternative offerors. Eleven of the 17 consulting contracts were sole source in which the contracting officer did not seek adequate competition. For example, Contracts Services awarded two separate sole source contracts for the Visitors Services Office (VSO) for \$14,280 each to perform Bicentennial tours. The contract recipients were a married couple who had previously volunteered their services to the VSO. The COTR informed us that there were many other qualified individuals, however, additional quotes were not

requested because the VSO staff liked the two award recipients. Contracts Services' continued use of noncompetitive contracts could have affected its ability to obtain the best value for these services.

The lack of competition in Contracts Services contracts is attributable, in part, to inconsistencies in the Library's policies concerning competition. LCR 1514-3 is not clear about when competition is required for individual consultants who perform in person. However, Contracts Services internal policies require competition for individual consultants. The Contracts Services Acquisition Alerts Handbook requires obtaining three quotes on procurements between \$2,500 and \$25,000; and formal solicitations are required for procurements exceeding \$25,000. Contracts Services Operating Instruction number 1030, *Engagement of Consultants and Experts as Contractors for Delivery of a Specific Article or Service*, requires the contract specialist determine that only one source is available prior to contract award. FAR Part 10.001(a)(2)(ii) states that Agencies must conduct market research appropriate to the circumstances before soliciting offers for acquisitions with an estimated value in excess of the \$100,000 simplified acquisition threshold.

In many cases, contracting officers publicized notices in the Commerce Business Daily (CBD). Contracts Services now publicizes contracts on the internet through FedBizOpps.<sup>3</sup> While the CBD notification satisfied the minimum requirement of a market survey, more should be done. Additional guidance for outreach efforts is contained in FAR 10.002 (b)(2).

### **Recommendations**

- A. OGC should revise LCRs 1514-3 and 1614-2 to clarify when competition is required.
- B. Contracts Services should foster greater competition by: (1) contacting knowledgeable individuals in government and industry regarding vendor capabilities to meet Library requirements; (2) publishing formal requests for information in appropriate technical or scientific journals or business publications; (3) querying government databases that provide information relevant to agency acquisitions; (4) participating in interactive, on-line communication among industry, acquisition personnel, and customers; (5) obtaining source lists of similar items from other contracting activities or agencies, trade associations, or other sources; and (6) reviewing catalogs and other generally available product literature.

### **Contracts Services and OGC Response and OIG Comments**

The Acting Head of Contracts Services stated verbally that acquisitions for individual consultants and experts, of unlimited contract value, are not required to have competition. We disagree. The Contracts Services operating instruction requires the contracts specialist demonstrate that only one source is available before awarding a sole source contract. The individual consultants selected in our audit performed generic work that could have been

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<sup>3</sup> FedBizOpps is a government-wide on-line system used to advertise procurement actions.

performed by others. We believe that Contracts Services should comply with its policies and begin competing individual consultants as required. The Library will obtain better value by competing contracts.

OGC concurs that LCRs 1514-3 and 1614-2 should be rewritten and that market research should be conducted. OGC does not concur that full competitive procedures must be or necessarily should be applied to contracts for consultant individuals. OGC adds that the level of competition the Library requires for individual consultants will be a policy matter to be worked out in the process of revising the LCRs. We agree that this issue should be addressed when the LCRs are rewritten, but believe that the Library should obtain more competition in its procurements even if the competition is not specifically required by law. Without this competition, the Library is likely paying more than it needs to for services. The task of revising the LCRs should begin as soon as possible.

#### **IX. Contracts Services Should Scrutinize Sole Source Justifications and Comply with Certification and Approval Requirements**

Contracts Services contracting officers do not scrutinize justifications to support the award of sole source contracts. For example, the justification on one National Digital Library (NDL) sole source contract for \$101,045 stated there was insufficient time for public solicitation and the consultant was the only source who could provide the required expert training support service in the allowable time. This justification is not in compliance with FAR Part 6.301(c)(1) which specifically states, "Contracting without providing for full and open competition shall not be justified on the basis of a lack of advance planning by the requiring activity." The contracting officer accepted the justification and awarded the contract without submitting the contract file to the Contract Review Board (CRB). CRB procedures dated July 13, 1999; Part 7n requires the submission of non-competitive procurements exceeding \$100,000 to the CRB. Some contracting officers may not have been aware of their responsibilities.

On another sole source contract, the senior contracting official's justification and signature were not included in the award of a \$656,019 contract. FAR Part 6.303-1(a) states, "A contracting officer shall not commence negotiations for a sole source contract ... or award any other contract without providing for full and open competition unless the contracting officer (1) justifies, if required in FAR 6.302, the use of such actions in writing; (2) certifies the accuracy and completeness of the justification; and (3) obtains the approval required by FAR 6.304." This requires senior level procurement official approval for contract actions exceeding \$500,000, including the dollar value of all options.

Contracts Services' actions in continuing to award these contracts noncompetitively affects its ability to obtain the best value on contracts. Also, the Library may be vulnerable to protests from other contractors who are excluded from contract solicitations. Use of unsupported sole source contracts also gives the appearance of bias and favoritism in the contracting process.

## **Recommendations**

- A. Contracts Services' contracting officers should review sole source justifications for compliance with FAR Part 6 requirements and return to the service units any that are not in compliance.
- B. Contracts Services should require that all Contracting Officers comply with the CRB review procedures for non-competitive contracts that exceed \$100,000 and FAR requirements for certification and approval of contracts exceeding \$500,000.
- C. Contracts Services should also issue a memorandum to service units specifically stating the criteria for using sole source contracts. The memorandum should emphasize that a lack of advanced planning is not sufficient justification for sole source contracting.

## **Contracts Services Response and OIG Comments**

The Acting Head of Contracts Services verbally responded that the sole source justifications were not required in two of the above instances because the consultants were individuals. She agreed that adequate justifications are required for the two companies involved. We disagree and believe the justifications were required in all of the instances. For the two individual consultants, we believe the contracting officer has the authority to request sole source justifications. In these instances where sole source justification is requested, it must meet the FAR requirements.

The former Chief of C&L concurred with the recommendations and stated that the contracting officers failed to comply with the FAR, CRB, and Acquisition Alerts Handbook.

### **X. Contracts Services Could Better Support Service Units and Avoid "Contract Splitting" By Utilizing Alternative Contracting Vehicles**

Contracts Services awarded multiple NDL sole source contracts to two consultants in the amount of \$2,500 per contract. The two consultants were contracted to periodically develop supporting subject material to be placed on the American Memory website. A new contract was awarded each time a subject was selected for the website. The consultants were awarded 17 contracts totaling approximately \$39,000 and \$24,000 over a two-year period. NDL awards at the \$2,500 level circumvented the three quotes required by the Contracts Services Acquisitions Alerts Handbook and the advertising requirements of FAR Part 5. NDL also circumvented the additional approval signatures of OGC and the Associate Librarian<sup>4</sup> for awards greater than \$25,000 as required by LCR 1514-3, Section 6.

Service units could benefit from combining multiple awards into larger, single acquisitions. Larger acquisitions would require more initial effort in the award process; however, the

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<sup>4</sup> The Library no longer has an Associate Librarian.

avoidance of multiple awards would save time by eliminating the need to award separate contract actions. The issuance of a purchase order would be the only requirement once the initial contract is in place. Also, these contracts could better serve the needs of the service units and also generate greater competition.

Contracts Services Acquisitions Alerts Handbook states, “split requirements for the purpose of keeping estimated dollars under the simplified acquisition threshold, or other prescribed approval or review levels is not permitted.” The FAR also prohibits splitting requirements to avoid review/approval thresholds. The contracting officer did not require the service unit to combine these contracts because she did not notice the repetitive contracts. Also, there was no apparent supervision or review of the contracting files that may have detected the repetitive awards.

### **Recommendations**

- A. Contracts Services should advise the service units of the availability of various contract vehicles, such as blanket purchasing agreements and indefinite delivery indefinite quantity contracts that can be awarded on a multi-year basis.
- B. Contracts Services should inform the service units that splitting requirements to avoid competition is not permitted by Library contracting policies and the FAR.
- C. Contracts Services should provide guidance to the contracting officers to ensure that requirements are not split and ensure that contracting officers are supervised including reviewing contract files prior to award.

### **Contracts Services Response and OIG Comments**

The former Chief of C&L generally concurred with the recommendations and stated that through the continuing COTR training course, service units have been advised that splitting requirements to avoid competition is not permitted. We believe the COTR training is a good mechanism to inform the service units. However, we have no indication that Contracts Services has advised the service units of the availability of various contract vehicles and provided guidance to the contracting officers to ensure that requirements are not split.

### **XI. Contracts Services Should Require Statements of Work Before Negotiating Contracts**

Contracts Services awarded 2 of 17 sampled contracts without adequate Statements of Work (SOW) from the service units. In one instance, the contracting officer used the consultant’s proposal as a substitute for the SOW and on the other, accepted a one-page budget as a substitute. Neither of these documents defined the functions to be performed or addressed performance requirements.

Without a written SOW that precisely describes the service unit's needs, the parties to the contract may not know what is to be accomplished and the Library may be unable to adequately measure the consultant's performance. Additionally, significant legal and contractual problems can be avoided if there is a clear, documented understanding of the scope of work. FAR Part 11.002(a)(2) states, "To the maximum extent practicable, ensure that acquisition officials (i) state requirements with respect to an acquisition of supplies or services in terms of-- (A) functions to be performed; (B) performance required..."

The reason for inadequate and/or non-existent SOWs appears to be insufficient pre-award planning by the service units. In some cases, contracting officers were under pressure to award contracts and had little time to fulfill service unit requests.

### **Recommendations**

- A. Contracts Services should formally communicate to the service units that advanced planning is needed to allow sufficient time for SOW preparation and contracting officer award responsibilities.
- B. Contracts Services should return SOWs that do not state functional and performance requirements.

### **Contracts Services Response and OIG Comments**

We have not received any response from Contracts Services. The recommendations remain.

## **XII. Contracts Services Should Avoid Awarding Contracts To Current Library Employees**

Contracts Services awarded a \$26,000 consulting contract to an NDL employee who resigned after receipt of the contract award. Contract number 99LCAG1862 was awarded on June 24, 1999 and the effective resignation date of the consultant was July 28, 1999. NDL began processing the paperwork to rehire the consultant as early as May 1999. The contracting officer was unaware of the consultant's status as a temporary employee when she prepared the purchase order on June 24, 1999. These actions present the appearance of favoritism or preferential treatment by the government toward its employees.

According to the FAR Part 3.601(a), a contracting officer shall not knowingly award a contract to a government employee or to a business concern or other organization owned or substantially owned or controlled by one or more government employees. This policy is intended to avoid any conflict of interest that might arise between the employee's interests and their government duties. Form 52 also has an entry to document whether the engagement is for a current employee.

## **Recommendation**

Contracts Services should revise form 52 requiring COTRs to certify that consultants are not Library employees or document the compelling reasons why it is necessary to contract with a current employee. In the absence of this certification, the Contracting Officer should be required to review the employment status of each consultant prior to contract award.

## **Contracts Services Response and OIG Comments**

The former Chief of C&L did not respond to the form 52 revision, but stated that the burden to review the employment status of all potential consultants cannot be placed on Contracts Services.

We believe the certification requirement relieves Contracts Services of the burden to check each contract.

**Appendix A**  
(Page 1 of 3)

**Consolidated List of Recommendations**

- I. CRS should use Contracts Services to procure all contracts except for temporary or intermittent consultants or experts.
- II.
  - A. CRS should expand its current contract Guidelines to include policy on important acquisition controls for awarding, administering, and terminating contracts as detailed in Finding II. The FAR should be used to identify specific procedures that are relevant to CRS operations.
  - B. OGC should revise LCR 1614-2 to clarify that CRS is exempt from following the FAR for contracts within CRS statutory procurement authority.
- III.
  - A. CRS should train its COTRs.
  - B. CRS contract specialist and COTR signatures should be required on Attachment C prior to all contract awards.
- IV. CRS should institute a policy requiring the contracting officer and contract specialist to document the contract file with the principal elements of negotiated agreements.
- V.
  - A. CRS and Contracts Services should develop and implement policies that require sufficient cost analysis.
  - B. Contracts Services should train its contracting officials on the requirements and guidance to perform these analyses.
  - C. CRS contracting officials should obtain outside sources when needed to perform cost and pricing audits such as the Office of the Inspector General and the Defense Contract Audit Agency.
- VI. CRS and Contracts Services should check GSA debarment lists prior to awarding contracts.
- VII.
  - A. OGC should revise LCR 1514-3 eliminating the requirement for the Director of FSD or the Budget Officer to approve consulting contracts.
  - B. Contracts Services should revise form 52 and discontinue OGC approval for consulting contracts under \$25,000.

**Appendix A**  
(Page 2 of 3)

- C. Contracts Services and OGC should define and document the scope of the OGC consulting contract reviews.
- VIII. A. OGC should revise LCRs 1514-3 and 1614-2 to clarify when competition is required.
- B. Contracts Services should foster greater competition by: (1) contacting knowledgeable individuals in government and industry regarding vendor capabilities to meet Library requirements; (2) publishing formal requests for information in appropriate technical or scientific journals or business publications; (3) querying government databases that provide information relevant to agency acquisitions; (4) participating in interactive, on-line communication among industry, acquisition personnel, and customers; (5) obtaining source lists of similar items from other contracting activities or agencies, trade associations, or other sources; and (6) reviewing catalogs and other generally available product literature.
- IX. A. Contracts Services' contracting officers should review sole source justifications for compliance with FAR Part 6 requirements and return to the service units those that are not in compliance.
- B. Contracts Services should require that all Contracting Officers comply with the CRB review procedures for non-competitive contracts that exceed \$100,000 and FAR requirements for certification and approval of contracts exceeding \$500,000.
  - C. Contracts Services should also issue a memorandum to service units specifically stating the criteria for using sole source contracts. The memorandum should emphasize that a lack of advanced planning is not sufficient justification for sole source contracting.
- X. A. Contracts Services should advise the service units of the availability of various contract vehicles, such as blanket purchasing agreements and indefinite delivery indefinite quantity contracts that can be awarded on a multi-year basis.
- B. Contracts Services should inform the service units that splitting requirements to avoid competition is not permitted by Library contracting policies and the FAR.
  - C. Contracts Services should provide guidance to the contracting officers to ensure that requirements are not split and ensure that contracting officers are supervised including reviewing contract files prior to award.

**Appendix A**  
(Page 3 of 3)

- XI. A. Contracts Services should formally communicate to the service units that advanced planning is needed to allow sufficient time for SOW preparation and contracting officer award responsibilities.
- B. Contracts Services should return SOWs that do not state functional and performance requirements.
- XII. Contracts Services should revise form 52 requiring COTRs to certify that consultants are not Library employees or document the compelling reasons why it is necessary to contract with a current employee. In the absence of this certification, the Contracting Officer should be required to review the employment status of each consultant prior to contract award.

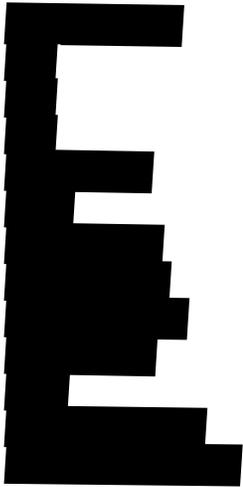
## **Appendix B**

### **Acronyms Used in This Report**

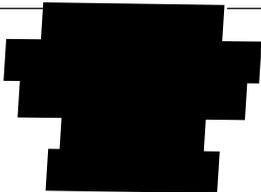
<b>CBD</b>	Commerce Business Daily
<b>CRB</b>	Contract Review Board
<b>COTR</b>	Contracting Officer's Technical Representative
<b>CRS</b>	Congressional Research Service
<b>C&amp;L</b>	Contracts and Logistics
<b>FAR</b>	Federal Acquisition Regulation
<b>FFS</b>	Federal Financial System
<b>FSD</b>	Financial Services Directorate
<b>FY</b>	Fiscal Year
<b>GAO</b>	General Accounting Office
<b>GSA</b>	General Services Administration
<b>LCR</b>	Library of Congress Regulation
<b>NDL</b>	National Digital Library
<b>SOW</b>	Statement of Work
<b>OGC</b>	Office of the General Counsel
<b>OIG</b>	Office of the Inspector General
<b>USC</b>	United States Code
<b>VSO</b>	Visitor Services Office

**Appendix C**  
(Page 1 of 2)

**Summary of Specific Findings For Contracts Services' Contracts**

Contract/Purchase Order Number	Consultant	Contract Amount	Inadequate Cost Analysis	Inadequate Competition	Insufficient Sole Source Documentation	Split Purchases	Lack of SOW	
<b>Contracts Services</b>								
C-LC99021		\$656,019	x		x			
00CLCDV4900		\$428,000						
00CLCDV2942		\$410,329						
00CLCDV4268		\$375,710	x				x	
99CLCDV0221		\$321,513	x					
98CLCDV1802		\$309,991						
00CLCAG2883		\$101,045	x		x	x		
98AG9802487		\$54,500	x		x			
99CLCAG1862		\$26,000	x		x	x		
00CLCAG2922		\$24,000	x		x			
00CLCAG3154		\$16,832	x		x	x	x	
00CLCBP3730		\$14,280	x		x		x	
99CLCSP9967		\$2,500	x		x		x	
99CLCAG3464		\$2,500	x		x		x	
99CLCAG0203		\$2,500	x		x		x	
99CLCAG1916		\$2,500	x		x		x	
99CLCAG3463		\$2,500	x		x		x	
Subtotal			<u>\$2,750,719</u>					

Summary of Specific Findings For CRS Contracts

Contract/Purchase Order Number	Consultant	Contract Amount	Inadequate Cost Analysis	Inadequate Competition*	Insufficient Documentation
				Note	
RWJ00-478-02		\$1,500		N/A	x
RWJ99-478-06		\$77,689		N/A	x
99-04		\$10,220		N/A	x
00-11		\$79,684	x	N/A	x
99-21		<u>\$391,778</u>	x	N/A	x
Subtotal			<u>\$560,871</u>		
Grand Total		<u>\$4,411,590</u>			

\*CRS contracts do not require competition.



**Memorandum**

August 1, 2002

**TO:** Karl W. Schornagel  
Inspector General

**FROM:** Daniel P. Mulheenan  
Director

**SUBJECT:** Response to Draft Audit Report: 2000-INA-LCWD-004, *Consulting Contracts: More Competition, Cost Analysis, and Administrative Compliance Needed*

This memo transmits our formal responses to the findings and recommendations of the subject draft audit report. We appreciate the opportunity to review the draft report and to provide comments. I would be happy to meet with you to discuss this in more detail or answer any questions you may have.

attachment

**Congressional Research Service**  
**Responses to Findings & Recommendations of**  
**AUDIT 2000-INA-LCWD-004**

**FINDING #1:** CRS acquisitions, except for experts and consultants, should be referred to Contracts Services

**CONDITION:** CRS's statutory authority permits acquisitions for experts and consultants on a temporary basis. We believe CRS exercised a broad interpretation of the statute in awarding noncompetitive contracts for computer support and training. The computer contracts included indirect generic information technology services and training support. The services included training; one on one employee consultations on WordPerfect, Quattro Pro, and Corel; troubleshooting; providing technical assistance; arranging for outside repair of computers, monitors, and printers; a new employee consultation on the differences between Word and WordPerfect; and supporting the CRS relocation project, including the scheduling and timing of employee office moves. These tasks represent routine information technology support that should be contracted through Contracts Services.

CRS awarded the same contractor at least three consecutive contracts for almost one year each, therefore, we also question their temporary classification. The first two, valued at \$391,778 and \$448,960 respectively, were awarded without competition, however, the most recent contract was awarded competitively. CRS also awarded, without competition, three consecutive consulting contracts to a former employee valued at \$79,684, \$68,000 and \$72,200. Although these contracts had an approximate one-month break between awards and did not technically violate the "intermittent" requirement, they could be viewed as other than temporary.

Our interpretation of 2 U.S.C., CRS's exclusive authority for contracting, is that the exemption from competition is intended for services that would be used directly to support Congressional needs such as research or studies. On January 18, 2001, we requested a legal opinion from OGC on this matter. On November 7, 2001, OGC responded that it does not believe CRS exceeded the scope of its statutory authority under 2 U.S.C. § 166 (h)(2). OGC stated that because the terms "expert," "consultant," or "persons learned in specialized fields of knowledge" are not defined in other applicable sections of U.S. Code, it cannot conclude that organizations of persons learned in computer technology are outside the scope of the statute. OGC stated that it did not have the information to assess whether the contracts meet the statutory requirement of being temporary or intermittent services. CRS maintains that the intent of 2 U.S.C. § 166 is to permit the flexibility to quickly support Congress, and interprets the computer support and training contract as a mechanism to support its research capacity and therefore facilitate its Congressional support.

CRS may not have obtained the best price or value on these contracts and others due to the lack of competition. Additionally, opportunities for volume purchase discounts exist when procurements are combined with other Library-wide procurements. Finally, the appearance of favoritism exists when consecutive sole source contracts are awarded to the same contractor.

**RECOMMENDATION:** CRS should use Contracts Services to procure all contracts except for temporary or intermittent consultants or experts.

**Congressional Research Service**  
**Responses to Findings & Recommendations of**  
**AUDIT 2000-INA-LCWD-004**

**CRS RESPONSE:** We do not concur with your Office's "interpretation" that CRS' statutory "exemption from competition is intended for services that would be used directly to support Congressional needs such as research or studies." For the reasons set out below, we believe that there is no basis or authority for such an interpretation, and that consequently the language quoted above should be deleted from the draft report. We also request the removal of all other language in the draft report that relies upon this interpretation. (i.e., "We believe CRS exercised a broad interpretation of the statute in awarding noncompetitive contracts for computer support and training" and "We interpret CRS' exemption from competition to apply only to services that would be used directly to support Congressional needs such as research or studies...")

As the draft report itself acknowledges, your Office "requested a legal opinion" from the Library's Office of General Counsel (OGC) on the scope of CRS' contracting authority. In response, by memorandum of November 7, 2001, OGC concluded that it "does not concur" with your Office's interpretation, and that, with respect to the two contracts at issue, "CRS did not exceed the scope of its statutory authority..." After analyzing CRS' statutory authority under 2 U.S.C. § 166(h)(2) and the relevant legislative history, OGC expressly rejected your Office's interpretation: "While it may be intuitively reasonable to infer that the intent of the CRS statute is to provide maximum flexibility to acquire assistance from policy experts on substantive matters to supplement the capabilities of the Service's permanent staff, the language of the statute is not this restrictive." OGC concluded by reaffirming its conclusion that "the contracts in question were within the scope of CRS' direct procurement authority."

Library of Congress Regulation 211-10, Section 2, states that the "General Counsel is the final legal advisor for all matters relating to the Library of Congress..." The OGC has rejected your Office's interpretation of the scope of CRS' contracting authority and there is no statutory or regulatory basis for your Office to contest this "final" conclusion. Consequently, it is our view that the draft report should be revised to conform to the OGC's conclusion and any reliance on a contrary interpretation should be removed from the draft report.

Regarding the temporary issue, CRS is mindful of the requirement and will continue to exercise vigilance in the conduct of its contract authority. With regard to CRS obtaining best price or value, please refer to our response to Finding #5. And finally, regarding potential opportunities for volume discounts, we agree that opportunities for volume discounts may occur if we combine procurements with the Library. Typically, the contracts awarded under the Director's authority are one-of-a-kind and unique to the Service; however, we will pursue opportunities for combining procurements with the Library when we have shared requirements.

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**Responses to Findings & Recommendations of**  
**AUDIT 2000-INA-LCWD-004**

**FINDING #2:**     **CRS Contracting Policies and Procedures Need Expanding**

**CONDITION:**     CRS does not have written contracting policies and procedures for (a) contract administration, (b) personal and organizational conflicts of interest, (c) government property, (d) record retention, (e) quality assurance, and (f) acquisition planning. In the contract administration area, the policies do not address contract modifications, terminations, subcontracting restrictions, and pricing. The policies do not address the use of Library property such as computers and office space. The Guidelines are silent on the establishment, maintenance, and disposal of CRS contract files and the contractor's record retention requirements.

Although CRS is not required to comply with the FAR, Library of Congress Regulation (LCR) 1614-2 does not mention the exclusion. Even though the exclusion exists, the FAR contains many important controls to ensure the integrity of the acquisition process that should be incorporated into CRS' policies. Without these policies, there is little assurance employees are performing contracting tasks in a manner consistent with management's intent for internal controls.

The *Standards for Internal Controls in the Federal Government* (GAO/AIMD-00-21.3.1), November 1999 states: "Internal controls and all transactions and other significant events need to be clearly documented, and the documentation should be readily available for examination. The documentation should appear in management directives, administrative policies, or operating manuals and may be in paper or electronic form. All documentation and records should be properly managed and maintained."

Two senior CRS officials with extensive knowledge of CRS procurements recently retired. The need for written policies and procedures is more pronounced without these individuals.

**RECOMMENDATIONS:** (A)     CRS should expand its current contract Guidelines to include policy on important acquisition controls for awarding, administering, and terminating contracts as detailed in Finding II. The FAR should be used to identify specific procedures that are relevant to CRS operations.

(B)     OGC should revise LCR 1614-2 providing an exception to CRS regarding specific FAR adherence.

**CRS RESPONSE:**     We agree with the recommendation that CRS should expand its current contract Guidelines to include policy on important acquisition controls for awarding, administering, and terminating contracts as detailed in Finding II. We have already begun to review the FAR to identify specific procedures that are relevant to CRS operations. The rewritten contract guidelines will be completed within the next year.

With regard to some of the subjects which will be covered in the guidelines, we want to note that the text of our contracts contain provisions on terminations, subcontracting, and conflicts of interest. Also, many of the products are reviewed through the Service's policy review

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process before contract deliverables are accepted. However, we do agree that our internal guidelines are not comprehensive in these areas, and that there are some issues for which no written guidance is currently available. We will correct this with the revised guidelines.

LCR 1614-2 was amended in July 2002, at the request of CRS, and Section 1 now reads: "This Regulation does not govern the Congressional Research Service to the extent of its separate statutory authority to procure the assistance of individual experts and consultants, organizations of experts and consultants, and other persons, as specified in 2 U.S.C. § 166(h)."



**Congressional Research Service**  
**Responses to Findings & Recommendations of**  
**AUDIT 2000-INA-LCWD-004**

**FINDING #4:**      **CRS should document contract negotiations**

**CONDITION:**      The five CRS contract files we reviewed did not contain sufficient documentation of the negotiated agreement. The files contained no documentation or correspondence explaining how the final cost and pricing was determined or the positions taken by the consultants/contractors or the Library. On a CRS computer support contract, there was no documentation explaining why different profit rates were applied to different contract tasks. On another contract, the contract specialist could not explain why an eight percent overhead rate was given to a former employee as an independent consultant and other consultants in similar circumstances received different rates.

CRS could be vulnerable without this documentation in the event of a protest. Also, valuable cost and pricing information that could be used in subsequent contracts would not be available. This lack of information could result in CRS being at a competitive disadvantage with future contracts and consequently paying more for consulting services.

According to the contract specialist, her predecessor always maintained the contract files in this manner and she was following the model. Based on the recommendations provided at the exit conference, the contract specialist has begun to document the contract file with the principal elements of the negotiated agreement.

**RECOMMENDATION:**      CRS should institute a policy requiring the contracting officer and contract specialist to document the contract file with the principal elements of negotiated agreements.

**CRS RESPONSE:**      We agree with the recommendation that full documentation on the principal elements of negotiated agreements is essential and reduces risk. However, a correction is requested in the final audit report. The draft report states that "In all cases reviewed, the contract files contained no documentation or correspondence explaining how the final cost and pricing was determined or the positions taken by the consultants/contractors or the Library." While we acknowledge that there is room for improvement in this area, CRS maintains that the basis for the cost is documented in the file for all the contracts the auditor reviewed. Further, since the exit interview for this audit, we have increased our efforts to ensure that all elements of negotiated agreements are documented sufficiently.

**Congressional Research Service**  
**Responses to Findings & Recommendations of**  
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**FINDING # 5:**     **CRS and Contracts Services Could Realize Savings By Analyzing Cost Proposals**

**CONDITION:**     CRS and Contracts Services did not perform sufficient pre-award cost analyses on 16 of 22 sampled consulting contracts. On a sole source contract valued at ██████████, CRS paid an overhead rate of 54.98 percent. The Defense Contract Audit Agency (DCAA) performed an unrelated audit of this contractor prior to the award and recommended an overhead rate of 37 percent. Additionally, the negotiated rate with this firm was 40.5 percent on the two previous contracts. There was no record of any analysis of this potentially inflated overhead rate.

The contract award justification contained incorrect information that may have been relied on by the Contract Review Board. The justification states that the contractor's costs were based on rates from the previous contract in which its costs were clearly the lowest among several bidders. However, the previous contract was not competitive. There was an even earlier competitive contract, but the vendor was not the lowest bidder. The apparent cause for accepting the increased overhead rate without any analysis was that another firm purchased the contractor prior to the award and the rate may have increased under the new company. Regardless, the rate should have been negotiated. Overhead rates are often reduced as a result of negotiation.

On a Contracts Services sole source contract valued at ██████████ there was no travel or fringe benefit analysis. Also, the overhead rate was applied to student assistants on the contract modification, however, the base contract did not include this additional cost. The contracting officer did not ask any questions or challenge any cost elements in the proposal. On the student assistants alone, this may have resulted in savings of \$6,041. Although this amount does not seem to be significant, it represents the savings on only one cost element in the contract. CRS and Contracts Services could obtain significant savings if they would identify those high risk cost elements and contracts and perform cost analyses.

FAR Part 15.404.1 (c) defines cost analysis as the review and evaluation of the separate cost elements and profit in an offeror's or contractor's proposal (including cost or pricing data or information other than cost or pricing data), and the application of judgment to determine how well the proposed costs represent what the cost of the contract should be, assuming reasonable economy and efficiency. FAR Part 15.402 states: "The contracting officer should use every means available to ascertain whether a fair and reasonable price can be determined before requesting cost or pricing data."

Although CRS recently provided contract pricing training to its contract specialist, its Guidelines do not require cost analyses to be performed. Attachment A to its Guidelines includes general questions regarding cost, however, none of the questions address cost analyses or indirect overhead rate reviews.

**RECOMMENDATIONS:** (A)     CRS should develop and implement policies that require sufficient cost analysis.

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**AUDIT 2000-INA-LCWD-004**

- (B) CRS contracting officials should obtain outside sources when needed to perform cost and pricing audits such as the Office of the Inspector General and the Defense Contract Audit Agency.

**CRS RESPONSE:** We concur with the recommendation that “CRS should develop and implement policies that require sufficient and competent cost analysis.” This policy statement will be part of the updated guidelines; however, the CRS policy will be framed in such a way that the requirement for cost analysis does not jeopardize CRS’s ability to place contracts in a timely basis. CRS’s time frames are often very short, and we cannot agree to additional requirements that may hinder mission fulfillment.

While not subject to the FAR, we support adoption of the best business practices contained therein to the extent that they are compatible with CRS mission requirements. The FAR 15.404-1 (3) requires that cost analysis be used to evaluate the reasonableness of individual cost elements when cost or pricing data are required. Under FAR 15.403-4(a) (1), the threshold for obtaining cost and pricing data is \$550,000. In the past three years, only one contract awarded under the Director’s authority exceeded the threshold (\$651,414 for technical support, which is now acquired through GSA-FEDSIM). In fiscal 2000, we awarded 28 contracts with an average price of \$63,591; in fiscal 2001, we awarded 26 contracts with an average price of 41,406; and in fiscal 2002 to date, we have awarded 33 contracts with an average price of \$40,442. Although we agree with the recommendation, we would appreciate greatly a slight modification to the language that describes the condition with regard to CRS. CRS does perform analysis to determine that overall price offered is reasonable and realistic. We typically compare the proposed price against the price of previous contracts with similar work, we look at the cost of the contract based on knowledge of the market (e.g., given that technology salaries are rising sharply), and we perform an Internet check of GSA rates for similar categories. Given the size of the contracts awarded under the Director’s authority, the level of the analysis should be appropriate to the level of risk.

We agree that cost analysis can be valuable in high dollar and/or high risk contracts. As noted, the CRS contract specialist has completed a training course in contract pricing. We would welcome the assistance of such resources as the Office of the Inspector General or DCAA for contracts in excess of \$200,000, if their analysis can be done within mission-imposed time constraints. We will continue to perform limited cost analysis and price analysis where appropriate. Further, the Financial Services Directorate recently published Directive FSD 01-01, Cost and Benefits Alternatives Analysis for Planning, Programming, and Budgeting of Large Capital Assets. While this directive is aimed at large capital assets, the directive includes useful tools that can assist with cost comparisons for projects of any size, and we will use these tools where appropriate.

**Congressional Research Service**  
**Responses to Findings & Recommendations of**  
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**FINDING #6: CRS and Contracts Services Should Check Debarment Lists Prior to Awarding Contracts**

**CONDITION:** The Library is at risk of awarding contracts to unscrupulous or dishonest consultants because CRS and Contracts Services contracting officers do not check debarment listings prior to awarding contracts. LCR 1630 states "After the opening of bids or receipt of proposals, the Contracting or Granting Officer shall review the Library of Congress List of Those Excluded From Procurement Programs as well as the government-wide List maintained by the General Services Administration (GSA)." Additionally, it states, "Immediately prior to award, the Contracting or Granting Officer shall again review the Lists to ensure that no award is made to a listed contractor." The GSA debarment list provides a single comprehensive listing of consolidated business firms and individuals debarred, suspended, or otherwise excluded by government agencies from receiving federal contracts.

Library contracting officers were unaware of the requirement to check the debarment listings. Based on our audit recommendations, CRS and Contracts Services have begun to check debarment lists prior to contract award.

**RECOMMENDATION:** CRS and Contracts Services should check GSA debarment lists prior to awarding contracts.

**CRS RESPONSE:** We agree with the recommendation and we have initiated review of the GSA List of Parties Excluded from Federal Procurement and Non-procurement Programs (list of debarred contractors) prior to all contract awards. This review policy will also be part of our updated guidelines.

With regard to LCR 1630, upon receipt of this draft audit report, we consulted with the Library's Contract Services with regard to the Library of Congress List mentioned in the statement of condition. We were advised that the Library's debarment list is one and the same as the GSA list. We recommend that the LCR be amended accordingly.

UNITED STATES GOVERNMENT

**Memorandum**

Library of Congress

DATE: September 27, 2002

TO: Karl Schornagel, Inspector General

FROM: Elizabeth Pugh, General Counsel 

SUBJECT: Comments on Recommendations in Audit Report No. 2000-INA-LCWD-004  
re Contracting for Expert and Consultant Services

You have requested comments from the Office of the General Counsel (OGC) on Audit Report No. 2000-INA-LCWD-004 re Contracting for Expert and Consultant Services. Members of my staff and I have met with you and members of your staff and with CRS regarding the findings and the recommendations in your report, and my office has provided detailed comments and suggested edits to the report under separate cover. This memorandum documents the OGC position on those report recommendations that affect the OGC, and on those that implicate legal matters. The OGC responded to legal issues associated with the reports findings and recommendations regarding CRS' exercise of its statutory authority to contract for experts and consultants by memorandum in November 2001.

**II.B. OGC should revise LCR 1614-2 providing an exception to CRS regarding specific FAR adherence.**

We concur, and have already worked with CRS to amend the LCR. We note, however, that Library regulations cannot *provide* such an exception to CRS, as the Service is already exempt from the FAR pursuant to statute.

Therefore, we suggest modification of your recommendation as follows:

*OGC should revise LCR 1614-2 to clarify that CRS is exempt from following the FAR for contracts within CRS statutory procurement authority.*

**VII.A. OGC should revise LCR 1514-3 eliminating the requirement for the Director of FSD or the Budget Officer to approve consulting contracts.**

We concur.

**VII.B. Contracts Services should revise form 52 (also form 3/63) and discontinue OGC approval for consulting contracts under \$25,000.**

We concur.

**VII.C. Contracts Services and OGC should define and document the scope of the OGC consulting contract reviews.**

We concur.

**VIII.A. OGC should revise LCR 1514-3 to clarify when competition is required and align the policy with those of Contract Services.**

We concur that LCR 1514-3 should be revised to clarify when the use of competitive procedures is required, and note that changes to LCR 1514-3 may require similar changes to 1614-2.

However, we do not concur that the LCR should be brought into alignment with Contract Services policies. Legally, the reverse is true. LCRs, which are issued under the Librarian's statutory authority at 2 U.S.C. §136, are superior to directives issued by subordinate Library officers, and to standard operating policies and procedures of Library units. The LCRs themselves, of course, must conform to statute. Contract Services operating policies, including procurement policies and regulations issued under LCR 1614-2 § 4.D., must conform to regulations issued by the Librarian.

Therefore, we suggest modification of your recommendation as follows:

- A. OGC should revise LCR 1514-3 and LCR 1614-2 to clarify when competition is required.*
- B. Contracts Services should align its internal operating policies with the LCRs.*

**VIII.C. Contracts Services should foster greater competition by: (1) contacting knowledgeable individual in government and industry regarding vendor capabilities ...**

OGC concurs that LCR 1514-3 and LCR 1614-2 should be rewritten, and that Contracts Services and/or the requesting offices should conduct market research to determine whether pricing offered by consultant individuals is fair and reasonable. Market research and a determination that pricing is fair and reasonable are also necessary when contracting with consultant companies. However, OGC does not concur that full competitive procedures as laid out in the FAR (including sole source justifications) currently must be or necessarily should be applied to contracts for consultant individuals. Prospectively, the level of formal competition the Library will require when contracting with individual consultants will be a policy matter to be worked out in the process of revising the LCRs.

**XII. Contracts Services should revise form 52 requiring COTRs to certify that consultants are not Library employees. In the absence of this certification, the Contracting Officer should be required to review the employment status of each consultant prior to contract award.**

We concur in principle. We note, however, that procurement of consultants is subject to LCR 1514-3 rather than LCR 1614-2 and is therefore not subject to the FAR. Nevertheless, Library ethics regulations and other authorities support the principle of contracting with Library employees only in compelling circumstances when actual or apparent conflicts of interest are unlikely. The FAR's basic prohibition against contracting with Government employees also includes such an exception, at FAR 3.602.

Therefore, we suggest modification of your recommendation, as follows:

*Contracts Services should revise form 52 requiring recommending officials or COTRs to certify that recommended consultants are not Library employees or to document compelling reasons why it is necessary to contract with a current employee. In the absence of this certification, the Contracting Officer should be required to review the employment status of each recommended consultant prior to contract award.*

UNITED STATES GOVERNMENT

## Memorandum

LIBRARY OF CONGRESS

DATE: July 19, 2002

TO : Karl W. Schornagel  
Inspector General

FROM : John D. Webster, Director   
Financial Services

SUBJECT: Response to Draft Audit Report No. 2000-INA-LCWD-004

The purpose of this memo is to respond to the draft audit report, No. 2000-INA-LCWD-004, audit findings, VII. CONTRACTS SERVICES' APPROVAL PROCESS NEEDS STREAMLINING JULY 17, 2002.

### RECOMMENDATION (A):

OGC should revise LCR 1514-3 eliminating the requirement for the Director of FSD or the Budget Officer to approve consulting contracts.

### RESPONSE:

FSD Management **concurs** with the recommendation that the requirement for the Director, FSD or the Budget Officer to review the LW 3/63 form "*Recommendation for Engagement of Consultant or Expert as Contractor*" may be eliminated.

FSD will notify OGC to remove FSD.

FSD noted that the AMS contract was listed as part of the contracts reviewed in Appendix C. We believe a clearer presentation would be to annotate that there were no issues with the contract.

UNITED STATES GOVERNMENT

**Memorandum**

Library of Congress

DATE: November 7, 2001

LO: 2001-331

TO: Karl Schornagel, Inspector General

VIA: Jessie James, Associate General Counsel <sup>for JJJ</sup>

FROM: Meg Williams, Assistant General Counsel *Meg Williams*

SUBJECT: Audit 2000-INA-LCWD-004, Finding and Recommendations #1 and #2:  
Scope of CRS Authority to Contract for Experts and Consultants and  
Requirement to Follow the *Federal Acquisition Regulation*

This office has reviewed Finding and Recommendations #1 and #2 of Inspector General Audit #2000-INA-LCWD-004, the response of the auditee, statements of work from the contracts at issue, and regulations, statutory authorities and legislative history relevant to the question. We also met with the Director of the Congressional Research Service (CRS) and other CRS representatives on May 22, 2001 to discuss CRS' approach to procurement of expert and consultant services.

Based on our review of the law, this office does not concur with your findings. In establishing the two contracts in the audit sample, the CRS did not exceed the scope of its statutory authority under 2 U.S.C. § 166 (h)(2) to contract directly and non-competitively for assistance from organizations of experts and consultants and/or persons learned in specialized fields of knowledge. Procurements that are within scope of this statutory authority are also within scope of the LCR 1614-2 "Acquisitions of Supplies and Services" description of CRS direct procurement authority, and so CRS did not violate the regulation. Nor is CRS legally required, when exercising this direct statutory procurement authority, to follow the *Federal Acquisition Regulation (FAR)*. The basis for these conclusions is set out below.

We note however, that CRS statutory authority is explicitly for the *temporary or intermittent* assistance of consultants, experts, and specialists. If CRS had a requirement for long term support from an individual or organization that would be satisfied by letting a contract for a period in excess of one year would not be within scope of CRS' statutory authority. Such a requirement would have to be procured through the Library's regular competitive contracting procedures.

This office does partially concur with your recommendations. Like all major organizational units of the Library, CRS is required to use the Library's regular procurement channels to acquire goods and services for which CRS does not have separate statutory procurement authority. We agree that LCR 1614-2 should be amended to set forth more clearly the areas where the Director of CRS exercises statutory authority to procure directly, as contrasted with areas where CRS must go through the Library's central contracts office.

We also agree that it would be possible for the Librarian to choose to delegate to the Director of CRS authority to conduct direct procurements in areas beyond the expert and consultant contracting activity covered by 2 U.S.C. § 166 (h). Indeed, LCR 1614-2 already includes one such delegation. By that regulation, the Director of CRS may acquire “Library materials for mission requirements” – procurement authority usually exercised under 2 U.S.C. § 131 by the Director for Acquisitions in Library Services.

Finally, we agree with your observation that the FAR is designed to provide the best value to the Government customer while at the same time meeting public policy objectives and maintaining public trust in the fairness of Government contracting. We recognize that CRS has a highly specialized and demanding mission, and that it operates in a critical and time-sensitive environment. CRS’ statutory authority to conduct certain procurements directly and non-competitively is no doubt a reflection of this operating context. We nevertheless agree with you that the Government’s interests would be best protected if, whenever possible consistent with accomplishing its mission, CRS were to: follow the FAR’s well-known, open, and uniform procedures when establishing and administering contracts; include appropriately tailored FAR clauses in its contracts; and utilize competitive processes for selection. We are pleased to note in the audit response from CRS management that the Service adheres to a modified FAR process in source selection activities, and that clauses on terminations and disputes are included in CRS contracts. Perhaps it would be appropriate for your office to work with CRS to identify additional areas where adopting the standard FAR model could make CRS’ direct contracting practices more consistent with Government-wide policy.

### Statutory Background

CRS’ statutory authority for direct procurement derives from the Legislative Reorganization Act of 1970<sup>1</sup>, 2 U.S.C. § 166(h) which provides:

- (h)(1) The Director of the Congressional Research Service may procure the temporary or intermittent assistance of individual experts or consultants (including stenographic reporters) and of persons learned in particular or specialized fields of knowledge –
  - (A) by nonpersonal service contract, without regard to any provision of law requiring advertising for contract bids, with the individual expert, consultant, or other person concerned as an independent contractor, for the furnishing by him to the Congressional Research Service of a written study, treatise, theme, discourse, dissertation, thesis, summary, advisory opinion, or other end product; or
  - (B) by employment (for a period of not more than one year) in the Congressional Research Service of the individual expert, consultant, or other person concerned, by personal services contract or otherwise, without regard to the position classification laws, at a rate of pay not in excess of the per diem equivalent of the highest rate of basic pay then currently in effect for the General Schedule of section 5332 of Title 5, including payment of such rate for necessary travel time.

<sup>1</sup> Legislative Reorganization Act of 1970, Pub. L. 91-510, 84 Stat. 1140, 1380.

- (h)(2) The Director of the Congressional Research Service may procure by contract, without regard to any provision of law requiring advertising for contract bids, the temporary (for respective periods not in excess of one year) or intermittent assistance of educational, research or other organizations of experts and consultants (including stenographic reporters) and of educational, research, and other organizations of persons learned in particular or specialized fields of knowledge.

This authority to acquire assistance from experts, consultants and other specialists is similar to the direct procurement authority granted to Congressional committees by the same Act and found at 2 U.S.C. § 72a (i). Regarding CRS, the legislative history of the Act provides that:

To enable the Service to carry out its tasks more expeditiously and efficiently, the bill authorizes it: To hire or contract for the temporary services of experts, consultants, and research organizations ....

The bill contains several provisions designed to enhance the stature of the Services within the Library and to bring CRS into a closer relationship with the Congress. As did the Joint Committee on the Organization of the Congress, we considered and rejected a complete divorcement of the Service from the Library. In our judgment, the Library serves as a useful mantle for protecting the Service from partisan pressures. Furthermore, the effectiveness of the CRS will be enhanced by its continued instant access to the Library's collections and administrative support services.

At the same time, the statutory language directing the Librarian to grant the Service complete research independence and the maximum practicable administrative independence is meant to make the CRS as autonomous within the Library as possible. That autonomy is to extend most particularly to the preparation of the Service's budget and to the appointment of its staff.

H.R. Rep. No. 91-1215, Cong., 1st Sess. 4 (1970), *reprinted in* 1970 U.S.C.C.A.N. 4417, 4436.

#### Scope of "Experts, Consultants and Other Specialists"

The two CRS contracts in the audit sample were for computer-related technical support services: for dealing with Year 2000 related issues in CRS systems; evaluating, recommending, installing and troubleshooting PC and LAN hardware and software; analyzing and developing software applications; and evaluating and serving the training needs of CRS staff. The question of whether these contracts were in scope of CRS direct authority turns on whether such services can be considered those of experts, consultants, or persons learned in particular or specialized fields of knowledge.

While it may be intuitively reasonable to infer that the intent of the CRS statute is to provide maximum flexibility to acquire assistance from policy experts on substantive matters to supplement the capabilities of the Service's permanent staff, the language of the statute is not this restrictive. Nor are the terms "expert," "consultant," or "persons learned in specialized fields of knowledge" defined in other applicable sections of the U.S. Code.<sup>2</sup> We therefore

<sup>2</sup> Sections in Title 5 address hiring experts and consultants on a personal services basis, without actually defining either term. We note that 41 U.S.C. § 5, the basic statute requiring advertising for Government contracts, exempts from the advertising requirement services "required to be performed by the contractor in person" that are "of a professional or technical nature." (This is the authority under which the Library procures expert and consultant services without advertising, when appropriate.) Because computer expertise is certainly considered technical, this statute lends support to CRS' belief that computer support services are fairly considered to be services from persons

cannot conclude that organizations of persons learned in computer technology are outside the scope of the statute.

Furthermore, because the contracts were with organizations, not individuals, the exact statutory section at issue is § 166 (h)(2). As opposed to § 166 (h)(1), which requires that contracts with individuals be for delivery of a written product, the section on contracting with organizations does not require such a deliverable and would not preclude ongoing assistance services of the kind procured here.

Both in substance and in terms of their deliverables, therefore, we conclude that the contracts in question were within scope of CRS' direct procurement authority. We do not have the information necessary to assess whether the contracts meet the statutory requirement of being temporary or intermittent services not in excess of one year.

#### **Application of the FAR**

We have reviewed the CRS management response regarding whether the LCR 1614-2 requirement that Library procurements follow the FAR is controlling over procurements CRS conducts under its own statutory authority. We find the CRS interpretation that the policy and procedure requirements of LCR 1614-2 apply to contracting officers who derive their authority from the Librarian and not to the Director of CRS, whose authority derives directly from statute, to be a reasonable interpretation of the law. By statute (41 U.S.C. § 405 (a)) and by its own terms (FAR 1.101) the FAR only controls procurements by Executive Branch agencies. Other procuring authorities may adopted the FAR voluntarily, as the Librarian has chosen to do on behalf of Library procurements pursuant to 2 U.S.C. § 136. Within the scope of the contracting described in 2 U.S.C. § 166, however, CRS is an independent procuring authority, and need not follow the policies and procedures adopted by the Library, including the Library's adoption of the FAR. Nevertheless, as stated above, for the sake of economy and efficiency, and to promote both actual and apparent openness and opportunity in Government contracting, this office does recommend that CRS use the FAR wherever possible to provide boilerplate for CRS' contract instruments and to guide CRS' contract formation and administration process.

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within scope of expert/consultant/learned persons. By contrast, although "advisory and assistance services" also benefit from certain exceptions to competition requirements, under FAR 37.202, routine information technology, telecommunications and data processing activities do not qualify for as advisory and assistance services. This argues against CRS' interpretation. These authorities merely illuminate the Government's general approach to acquiring assistance from experts and consultants; they do not restrict CRS' ability to contract without advertising pursuant to its statute.