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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548



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OCT 2 1975

RELEASED

The Honorable John E. Moss
House of Representatives

Dear Mr. Moss:

Your May 9, 1975, letter requested that we review certain questions surrounding contracts that the Law Enforcement Assistance Administration (LEAA) was awarding to the Institute for Law and Social Research (INSLAW). INSLAW, located in Washington, D.C., was established on September 25, 1972, as a nonprofit, tax exempt corporation, specializing in research and analysis services for agencies engaged in administration of public law. You noted that you had documentary evidence indicating that certain LEAA employees had opposed the awards on substantive grounds.

In a June 5 meeting with your office, it was agreed that our report would summarize the history of the two recent contracts awarded INSLAW by LEAA, address your questions concerning internal LEAA objections to the awards, and ascertain whether LEAA employees were ordered not to cooperate or communicate with Members of Congress regarding the awards.

The two contracts in question are for a cost-effectiveness study of the Comprehensive Data Systems program and for the transfer of the Prosecutor's Management Information System to prosecutors desiring the system. As agreed with your office, we have discussed the report with LEAA officials and considered their views in preparing it.

To develop the desired information, we reviewed contract files for the two awards, including the justifications for awarding these contracts on a sole-source basis. We discussed initial objections to awarding the contracts with LEAA's Administrator, Deputy General Counsel, Comptroller, Deputy Inspector General, Director of Institute and Contract Audit Activities Division, Acting Director of the Grants and Contracts Management Division, Director of Office of Congressional Liaison, and the Chief Contracting Officer. Details concerning the two contracts follow.

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CONTRACT FOR COST-EFFECTIVENESS STUDY
OF COMPREHENSIVE DATA SYSTEMS

The Comprehensive Data Systems program uses people, computer technology, and telecommunications to provide a system for collecting, analyzing, and disseminating data from State criminal justice agencies for use by those agencies, the State, other States, and national programs. To develop and implement this system, LEAA has awarded over \$39 million to governmental units from May 1972 through June 1975.

INSLAW has been involved in the Comprehensive Data Systems program since November 1973, when it received a \$203,009 grant for a cost/benefit analysis to provide a methodology for determining the project's total development and operating costs at the Federal and State level. The grant called for the study to be completed by April 30, 1975.

The cost-effectiveness contract, awarded on May 5, 1975, for 1 year at a cost of \$223,238, included a management fee of \$13,000. The contract resulted from preliminary findings of a study done under the above-mentioned INSLAW grant which indicated that future costs of the Comprehensive Data Systems program would substantially exceed the present funding levels. The objective of the current contract is for INSLAW to develop and recommend changes in data system policies and fund allocation methods which will permit users of this system to recognize funding limitations anticipated over the next several years. INSLAW will try to find ways to reduce Comprehensive Data Systems' costs so that the reduction will (1) have minimum effect on programs already operating in participating States and (2) reduce costs in other States with minimum loss of program benefits.

CONTRACT ON THE TRANSFER OF THE PROSECUTOR'S
MANAGEMENT INFORMATION SYSTEM

The Prosecutor's Management Information System combines criminology and the law with management and computer science to help prosecutors organize, manage, and automate their offices. According to LEAA, this is the only known system which assigns priorities to criminal cases based upon criminological studies on recidivism, the relative seriousness of various crimes, and the expressed policies of the prosecutor.

The principal officials of INSLAW have participated in the development, operation, and subsequent transfer of the Prosecutor's Management Information System since its development began in the U.S. Attorney's Office in the District of

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Columbia Superior Court in 1969--first as employees of a public accounting firm, then as independent consultants, and finally as INSLAW officials.

INSLAW was granted \$212,278 for the period December 28, 1973, to January 27, 1975, to effect that system's transfer to prosecutors desiring it. Subsequent to the grant's expiration, LEAA issued a contract to INSLAW (on June 6, 1975, for \$219,595) so it could continue the transfer of the system and the provision of technical assistance upon request.

This system is being implemented, with INSLAW's technical assistance, in Rhode Island; Manhattan Borough, New York City; Union County, New Jersey; Orleans Parish, Louisiana; Marion County, Indiana; Wayne County, Michigan; Clark County, Nevada; and Los Angeles County, California. In addition, as of July 25, 1975, the District of Columbia and Cobb County, Georgia, had completed implementation of the system and 12 other areas were planning implementation. One of LEAA's goals is to place this system in 100 prosecutors' offices around the country within the next 2 years.

INTERNAL OBJECTIONS TO AWARDING
INSLAW CONTRACTS

Although we concluded that the award of the two contracts was not improper, during the contract negotiation phase various LEAA officials questioned INSLAW's operations. These questions, although eventually resolved, delayed award of the contracts. The LEAA Comptroller, after discussions with the Offices of General Counsel and of the Inspector General, raised several objections which he believed needed to be resolved before any contracts could be issued to INSLAW. These objections were summarized in an April 1975 draft memorandum to the Administrator and Deputy Administrator which was never formally transmitted. However, the Comptroller said that he had discussed these matters with them before the contracts were approved. His objections centered on:

- Use of sole-source contracts.
- Solvency of INSLAW.
- Use of claims against the Government as collateral for obtaining private bank loans.
- Equipment leasing practices.
- Current overcharges.

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--Internal company practices not conducive to efficient operation.

Use of sole-source contracts

Generally, solicitation of competitive bids is the preferred method of procurement because it helps assure reasonable costs, allows for innovation, and can improve the quality of the product. Also, the greater the number of sources submitting bids the wider the latitude of choice becomes. However, occasionally purchases and contracts may be negotiated without formal advertising because, among other things, it may be impracticable to secure competition--for instance, when property or services can be obtained from only one person or firm (sole source of supply).

Regarding the use of sole-source contracts, the LEAA Comptroller noted in his draft memorandum that LEAA should be extra cautious in insuring that all funding arrangements are proper and that services are being obtained at the lowest possible cost since INSLAW "has followed a spending pattern which reflects a lack of cost consciousness." Also, although there have been no allegations of favoritism to INSLAW, the Comptroller stated that,

"an appearance question is raised because it is common knowledge that LEAA has practically created the organization and that there are close ties between the head of the organization and the LEAA staff."

He noted further that LEAA faced the formidable problem of balancing these concerns with its very real need for obtaining INSLAW's services.

In justifying noncompetitive procurement for the Comprehensive Data Systems' contract, LEAA program officials noted the urgency of LEAA's need for the analysis and products to be provided, the unique qualifications of the contractor, and the quality of previous INSLAW work. In justifying the award of the Prosecutor's Management Information System contract on a sole-source basis, LEAA program officials stated that specialized knowledge and experience were not available from other sources and that INSLAW has successfully provided similar assistance under a previous LEAA grant. They determined that, although it would be possible for another firm to build a staff with INSLAW's specific capabilities, none had done so and such a staff could not be developed within the necessary time constraints.

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LEAA's Sole Source Review Board, composed of the Assistant Administrator of the Office of Planning and Management and the Comptroller, approved both contracts on April 30, 1975, but stated that future procurement of services to transfer the prosecutor's system should be competitive.

Upon receiving your request, we reviewed both contract files. The Comprehensive Data System contract had already been awarded to INSLAW. On June 4, 1975, we met with the Administrator of LEAA, at his request, to discuss our initial observations concerning the propriety of the contracts. We told him that, although we could not conclude that the reasons cited by LEAA as justification for awarding the contracts were improper, we questioned the practice of awarding contracts on a sole-source basis without "testing the market" to determine if there were other contractors capable of doing the work. LEAA did not appear to have adequately done this. We also pointed out that the Department of Justice internal auditors previously reported (August 1971) that LEAA needed to solicit more potential sources for needed services and have apparently concluded, in a review not yet completed, that LEAA is still not soliciting bids from enough sources.

On June 6 the LEAA Administrator approved the Prosecutor's Management Information System contract for 120 days at a cost of \$219,595, including \$42,354 for preagreement costs and \$13,269 for a management fee, instead of the proposed 1-year period at an estimated cost of \$312,350. He stipulated that, during this 120-day period, LEAA staff should determine the extent to which other contractors could do the work so that the remainder of the contract could be awarded competitively. However, as of September 15, LEAA had not made this determination even though the 120-day contract will expire on October 1. The slowness with which LEAA has acted raises questions as to whether it will be able to adequately test the market within the 120 days stipulated by the Administrator.

Solvency of INSLAW

The solvency of an organization that contracts with the Government is important because if it cannot pay its debts, as they become due, it may default on its Government contract. Although INSLAW had not been declared insolvent, the LEAA Comptroller was advised in April 1975 that, on the basis of an LEAA audit, it appeared INSLAW could remain solvent only if LEAA funded the two contracts discussed herein.

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During fiscal year 1974, approximately 80 percent of INSLAW's revenue was derived from LEAA grants, 8 percent from LEAA contracts, 9 percent from a Department of Justice contract, and 3 percent from nongovernmental sources. However, the Comptroller stated in his draft memorandum that even "continued LEAA funding cannot assure future solvency since all Government work involves unallowable costs for which outside fund sources are necessary."

To improve INSLAW's financial position, the LEAA Comptroller suggested to INSLAW's president in December 1974 that INSLAW contact private foundations for funds to cover costs disallowed under Government grants. He also suggested that INSLAW request contracts for the Comprehensive Data Systems study and the transfer of the Prosecutor's Management Information System so that a management fee could be negotiated. LEAA policy permits management fees on contracts but not on grants. These fees provide nonprofit organizations with working capital for growth.

The contracting officer in his "Determination of Prospective Contractor Responsibility" stated that, although INSLAW's financial situation appeared weak, the efforts of INSLAW's president to obtain nongovernmental grants or endowments and the award of cost-reimbursable contracts with management fees, should enable INSLAW to fulfill its contractual obligations with LEAA.

Use of claims against Government
as collateral for obtaining
private bank loans

LEAA auditors determined that, between January 15 and March 31, 1975, INSLAW took four short-term (30 day) loans in amounts ranging from \$15,000 to \$25,000 from a local bank. These loans were apparently intended to pay current business operating expenses. For each loan, it furnished the bank a schedule of outstanding billings on grants and contracts it had been awarded and was presently working on.

LEAA's Comptroller questioned whether pledging grants or specifying outstanding billings under grants as collateral for loans was a sound business practice and whether they could be used as collateral since a grant is not an asset of the organization but merely establishes a trust relationship between the Government and the organization.

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Since LEAA had never consented to such an arrangement, LEAA's General Counsel was asked to provide an opinion on the legality of this arrangement. Although a formal legal opinion was never issued, LEAA's General Counsel said that his office had determined that furnishing the bank a schedule of outstanding billings did not constitute collateral and that he had so advised the Comptroller. He stated that the Comptroller was also advised that interest on a loan is generally not an allowable reimbursable expense and should not be charged against a Federal grant or contract.

We agree that a schedule of outstanding billings does not constitute collateral; rather, it is an indication of expected revenue.

Equipment leasing practices

In his draft memorandum, the LEAA Comptroller noted that

"equipment leasing practices of INSLAW raise questions about title to the equipment purchased with grant funds, payment of interest with grant funds, and potential for overstated indirect cost charges."

The Director of LEAA's Institute and Contract Audit Activities Division told us that INSLAW sold to, and concurrently leased back from, a leasing company approximately \$24,000 of its own furniture and equipment on June 27, 1974, apparently to obtain additional working capital.

LEAA auditors checked all furniture and equipment provided to INSLAW under past LEAA grants and contracts against the listing of furniture and equipment that was sold and leased back. The auditors identified about \$1,600 of Government equipment from this list. Based on their discussions and review of INSLAW records, they concluded that the \$1,600 inclusion of Government equipment was an unintentional oversight which INSLAW should be requested to refund to LEAA. Since most of the equipment used in the sale/lease back arrangement belonged to INSLAW, the Comptroller's concern over selling equipment purchased with Government funds never became an issue although INSLAW will have to absorb all carrying charges related to this sale/lease back arrangement.

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Current overcharges

In his draft memorandum, the LEAA Comptroller charged that INSLAW apparently used a higher than actual indirect cost rate resulting in overcharges to grant funds. He further stated that this amount should be determined and payments reduced accordingly.

LEAA's "Financial Management Guidelines" state that LEAA may accept any indirect cost rate previously approved by a Federal agency; however, any change to this rate requires LEAA approval before becoming effective. INSLAW charged its indirect costs to LEAA according to a rate determined by dividing direct salaries plus fringe benefits into total indirect expenses. According to LEAA auditors, INSLAW, in a number of cases, was billing LEAA at a higher provisional rate than approved by LEAA because its own accounting firm recommended that it use a higher rate. However, all charges are subject to audit and if it is determined that the grantee has used a higher than actual rate, the grantee's future payments could be reduced until the difference is recovered.

Internal company practices not conducive to efficient operation

LEAA auditors questioned about \$29,500 of INSLAW's overhead expenses for fiscal year 1974; however, about \$28,000 of these expenses were eventually allowed by the contracting officer because he felt that they were reasonable. Office space rental, leased automobile, parking, and transportation costs composed about three-fourths of the \$29,500.

Office space was questioned because it exceeded LEAA guidelines of 150 square feet of working space per employee without prior written approval of LEAA. However, space costs were based upon the number of INSLAW's full-time employees and did not consider intermittent and/or part-time employees who used part of the space as permitted by the guidelines. Other factors responsible for INSLAW exceeding the amount of allowable working space were that approximately 2,100 square feet of the 8,240 square feet rented is hallway space and about 200 square feet is taken up by a kitchen. Although the contracting officer noted that INSLAW had made an administrative error by not obtaining prior written approval before moving to its new quarters, he determined the space rental to be reasonable and allowable.

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The contracting officer also determined that the leased automobile, parking, and transportation costs were reasonable business expenses allowable within the definition of Federal Procurement Regulations (41 C.F.R.1-15). However, LEAA auditors questioned these expenses as being in excess of what it would have cost for local transportation by taxi and to contract for pickups and deliveries of computer printouts and tapes used in INSLAW's research and development projects. The contracting officer concluded that, although a car is a convenience item, INSLAW's costs were not excessive.

Moreover, according to the Acting Director of LEAA's Grants and Contracts Management Division the award of any contract is a matter of negotiation for which the contracting officer is ultimately responsible. In the final negotiation, where differences exist the contracting officer must consider the reasonableness of the items included in the contractor's proposal in making his final determination.

LEAA EMPLOYEES' COMMUNICATION
WITH THE CONGRESS

We interviewed LEAA personnel to determine whether any LEAA employees were ordered not to cooperate or communicate with the Congress regarding queries about INSLAW. We determined that on one occasion an employee was directed to say nothing to a Congressman or his staff regarding INSLAW because LEAA believed this could best be handled by its Office of Congressional Liaison.

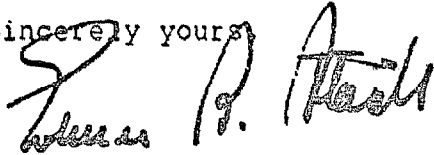
LEAA's Office of General Counsel has stated that any employee is entitled, subject to LEAA Standards of Conduct and Department of Justice Standards of Conduct (28 C.F.R. 45), to make a direct response to a Member of Congress. However, agency policy is for all contacts to be coordinated through the Office of Congressional Liaison since it has been delegated the authority and responsibility for developing and maintaining constructive relationships and policy coordination with the Congress and other Government organizations involved with legislative activities which affect LEAA and its programs.

In addition, the Office of Congressional Liaison coordinates and controls all LEAA communications with the Congress, including grant and contract notification, testimony, and legislative recommendations submitted to the Department of Justice. Finally, this office provides information

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and assistance to congressional offices on LEAA programs and activities.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "William P. Axtell". The signature is written in dark ink and is positioned to the right of the typed name.

William P. Axtell
Comptroller General
of the United States