

15516 Mr. Brennan
PL II

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

B-197868(2)

November 21, 1980

The Honorable Jesse Helms
United States Senate

Dear Senator Helms:

By letter of August 11, 1980, you requested that we review the issuance of a sole-source purchase order and a sole-source contract by the Council on Environmental Quality (CEQ) to Mr. David Sheridan in connection with a study of "Desertification of the United States." The purchase order, for \$9,950, was for a preliminary report identifying the salient issues relating to desertification; the contract, for \$15,000, was for a report suitable for publication on desertification.

On July 30, 1980, our Office responded to your prior inquiry regarding CEQ's procurement of Mr. Sheridan's services in connection with a study on "Off-Road Vehicles on Public Land." We indicated that CEQ had not provided an adequate sole-source justification for that procurement and concluded that CEQ should have obtained its needs through the use of competitive negotiation procedures. Based on our review of CEQ's report on the "desertification" study (copy enclosed) we reach the same conclusion here.

As we indicated in our prior response, the Environmental Quality Improvement Act of 1970, 42 U.S.C. § 4372(e)(1976), authorizes the Director of the Office of Environmental Quality "to contract * * * with individuals without regard to section 529 of title 31 and section 5 of title 41 in carrying out this function." While this authority permits CEQ to procure property or services by negotiation, it does not itself also confer authority on the agency to procure its requirements on a sole-source basis. Federal Judicial Center, 58 Comp. Gen. 350 (1979), 79-1 CPD 206.

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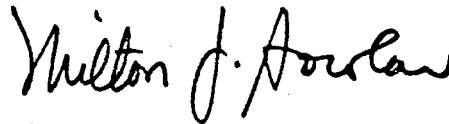
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Nevertheless, our Office has recognized that an agency may make a non-competitive award where, for example, its minimum needs can be satisfied only by services which are unique, or where time is of the essence and only one known source can meet the Government's needs within the required time frame. See Die Mesh Corporation, B-190421, July 14, 1978, 78-2 CPD 36. CEQ has not provided such a justification. The report merely states that Mr. Sheridan was well qualified to perform the initial task represented by the purchase order and that the Department of the Interior requested that CEQ "move rapidly" to develop a comprehensive policy and strategy to deal with domestic desertification problems. The report further explains that the contract for the report was awarded to Mr. Sheridan because it would have been wasteful to contract with another in view of the knowledge he acquired as a result of having performed the preliminary work under the purchase order. As we stated in our prior response to you a desired source's superior qualifications and expertise do not alone justify a sole-source procurement, since they do not necessarily preclude the existence of other qualified sources which were not solicited which could have satisfied the Government's needs. Leo Kanner Associates, B-182340, April 4, 1975, 75-1 CPD 205.

Since CEQ's report does not show that only Mr. Sheridan could perform either the services requested by the purchase order or the contract within CEQ's required time frame, the agency has not provided an adequate sole-source justification, i.e., CEQ should have obtained its needs through the use of competitive negotiation procedures. Nevertheless, as these services have been completed and the Government has received the benefit of those services we do not believe that any remedial action is appropriate.

B-197868(2)

We note that CEQ has indicated that its procurement process has been revised following our July 30 letter to you. Although this action was taken subsequent to this procurement we hope that these problems will be avoided in the future. To this end, we are at your request presently looking into CEQ's procurement procedures.

A handwritten signature in cursive script, reading "Milton J. Aoulan".

For The Comptroller General
of the United States

Enclosure



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20348

B-197868

November 21, 1980

The Honorable Nicholas C. Yost
General Counsel
Council on Environmental Quality
Executive Office of the President
722 Jackson Place, N. W.
Washington, D. C. 20006

Dear Mr. Yost:

We refer to the inquiry to this Office from Senator Jesse Helms regarding the procurement of the services of Mr. David Sheridan in connection with a study on "Desertification of the United States." We are enclosing a copy of our reply to Senator Helms for your information. Please consider our comments for future procurements of this type.

Sincerely yours,

A handwritten signature in cursive script that reads "Milton J. Rowland".

For The Comptroller General
of the United States

Enclosure