



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

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PROCUREMENT, LOGISTICS,
AND READINESS DIVISION

APRIL 24, 1981

B-197868

The Honorable Jesse Helms
United States Senate



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Dear Senator Helms:

Subject: Procurement Practices at the Council on
Environmental Quality (PLRD-81-24)

In response to your August 11, 1980, letter, we investigated contracts awarded by the Council on Environmental Quality. On December 18, 1980, we briefed your Office on the status of our review. This report summarizes the information provided during that briefing and additional data subsequently obtained.

We made our review of the Council's procurement procedures at Council headquarters in Washington, D.C. Our objectives were to determine (1) the number and general history of contracts awarded during fiscal years 1979 and 1980, (2) the extent of and justification for noncompetitive contracts, (3) the managerial controls used by the Council to minimize noncompetitive awards, and (4) the improvements (if any) needed to increase competition. We did not evaluate the Council's need for or use of the products or services procured.

We reviewed the Council's contract files and various internal procurement manuals, related memorandums, and instructions. We also interviewed Council personnel and Office of Administration officials in the Executive Office of the President concerned with procurement operations.

We found that:

- During fiscal years 1979 and 1980, 686 contract actions, valued at about \$9.9 million, were processed.
- The majority of awards were made without seeking competition.
- Contract files were not properly documented.
- Contracts were awarded by an administrative officer, rather than a trained, qualified, and experienced contracting officer.

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--Under a 1977 Presidential order, the Council's goods and services should have been procured by the Office of Administration in the Executive Office of the President.

BACKGROUND

The Council on Environmental Quality is one of 10 organizational units within the Executive Office of the President. The Council, which was established by the National Environmental Policy Act of 1969, consists of three members appointed by the President, with the advice and consent of the Senate. The President designates one member as chairperson.

The Office of Environmental Quality, which was established by Title II of the Environmental Quality Improvement Act of 1970, provides technical staff for the Council. The staff is made up of people from various disciplines, including scientists, economists, and lawyers. The Council on Environmental Quality and its staff (Office of Environmental Quality) are hereafter referred to as the Council.

The mission of the Council is to

- develop and recommend to the President national policies which further environmental quality;
- review and appraise Federal Government programs to determine whether they comply with the National Environmental Policy Act and contribute to sound environmental policy;
- perform continuing analyses of changes or trends in the national and global environment;
- conduct studies, research, and analyses on ecological systems and environmental quality; and
- assist the President in preparing the annual environmental quality report to the Congress.

To accomplish its mission, the Council uses a combination of its own staff (in-house) and contractor products and services.

OVERALL SPENDING

The Council spent more than \$7.5 million annually on a \$3 million budget. Other executive branch agencies provided the additional \$4.5 million that the Council spent.

Over the past 2 fiscal years (1979 and 1980), the Congress has appropriated about \$3 million annually for the Council. Each year, the Council spent the bulk of its appropriation for

relatively predictable object classes, such as salaries, travel, rent, utilities, and printing. The Council spent about \$0.5 million for procurement/contracting for supplies and materials, other services, and equipment. In addition to its appropriations, however, the Council spent (for procurement/contracting) about \$9 million received from other executive branch agencies during those 2 fiscal years. According to Council officials, this money was spent on contracts for scientific and environmental studies.

The Council executes both contracts and purchase orders. We examined each contract, contract amendment, and purchase order to get an overview of how the Council spent the money over the past 2 fiscal years. The following table shows our analysis:

Value of Goods and Services Purchased
By the Council

<u>Contracting instrument</u>	<u>FY 1979</u>		<u>FY 1980</u>		<u>Total</u>	
	<u>Actions</u>	<u>Value</u>	<u>Actions</u>	<u>Value</u>	<u>Actions</u>	<u>Value</u>
Contracts & contract amendments (over \$10,000)	39	\$4,503,000	49	\$4,544,000	88	\$9,047,000
Purchase orders (under \$10,000)	306	456,000	292	418,000	598	874,000
	<u>345</u>	<u>\$4,959,000</u>	<u>341</u>	<u>\$4,962,000</u>	<u>686</u>	<u>\$9,921,000</u>

MINIMAL COMPETITION IN CONTRACTING

The Council's contract and project files generally lacked evidence of attempts to obtain competition for supplies and services procured by contract. Further, the files generally contained no explanation or justification for the noncompetitive procurements. We also noted that the contracts were awarded by an administrative officer, rather than a trained, experienced, and qualified contracting officer.

The legislation creating the Council exempts it from the requirement to buy needed goods and services by the formal advertising method of procurement; that is, awarding a contract to that responsive and responsible bidder who submitted the lowest "sealed" bid. Instead, the Council is allowed to buy its goods and services exclusively through the negotiation method. Nothing in the basic legislation, however, grants the Council blanket authority to negotiate procurements on a sole-source or noncompetitive basis. Competition, even in negotiated procurement, should still be obtained to the maximum practical extent.

The Federal Procurement Regulations set forth detailed rules for civilian agencies to follow when purchasing or contracting for goods and services directly from commercial sources whether by formal advertising or negotiation methods. The regulations require that:

"Negotiated procurement shall be on a competitive basis to the maximum practical extent. When a proposed procurement appears to be noncompetitive, the procuring activity is responsible not only for ensuring that competitive procurement is not feasible but also for acting whenever possible to avoid the need for subsequent noncompetitive procurements. This action shall include both examination of the reasons for the procurement being noncompetitive and steps to foster competitive conditions for subsequent procurements, particularly as to the availability of complete and accurate data, reasonableness of delivery requirements, and possible breakout of components for competitive procurements."

To determine the extent of competition in the Council's contracting, we reviewed contract files for evidence of (1) requests for proposals, (2) requests for contractor statements of qualifications, and (3) records of negotiations between the Council and contractors. Generally, we found no such documentation in the contract files. According to Council officials, such documentation, to the extent it exists, would be in the various working files of the Council's project officers and at other agencies which were involved in the contractor selection and negotiation.

We examined the working files of some project officers to determine whether documentation demonstrating attempts to obtain competition was present and found those files incomplete. Because of time constraints, we did not go to the other agencies involved (those financing the contract) to review their files. Council representatives, nevertheless, maintained that, generally, they made efforts to obtain competition when awarding contracts but acknowledged that the contract files were inadequately documented.

We reviewed the Council's contract manual and found it to be inadequate. Council officials presented documents which demonstrated that they, too, recognized the contract manual contained material inaccuracies and that they were taking corrective action.

Since its inception, the Council has been awarding contracts without a qualified and trained contracting officer. Historically, the Council's administrative officer acts as a contracting officer. In addition, the administrative officer's duties include overseeing day-to-day operations concerning personnel, budgeting, and fiscal matters. Council officials acknowledged that the administrative officer's background, training, and experience

did not include procurement/contracting and that requiring one person to be responsible for so many diverse functions was extremely difficult. We believe that these circumstances may in part explain the extensive sole-source procurement and the paucity of documentation in the Council's contract files.

QUESTIONABLE PROCUREMENT AUTHORITY

Even though a Presidential order required the Council's procurement to be performed by a central procurement office within the Executive Office of the President, the Council persisted in awarding its own contracts.

In December 1977 the President issued Executive Order 12028 (still in effect) establishing the Office of Administration in the Executive Office of the President. The mission of the Office of Administration is to provide common administrative support and services to all Executive Office of the President organizational units (for example, the Council on Wage and Price Stability, the National Security Council, the Office of Science and Technology Policy, and the Council on Environmental Quality). Common administrative support that the Office of Administration provides includes such activities as data processing, personnel, payroll, accounting, budgeting, and procurement.

We asked Council officials why they were not complying with the Executive order. They said that during a meeting in early 1978 with Office of Administration representatives, an understanding was reached that the Council would continue to do its own procurement. However, this understanding was not committed to writing.

We questioned Office of Administration officials about the Council's apparent violation of the Executive order. According to the officials, the Council had not been granted a written exception or waiver to the Presidential order. Further, the officials said that they intended to take action soon to have the Office of Administration procurement staff perform the Council's procurement.

Office of Administration officials said that, over the past few years, their procurement staff had been gradually built up to perform the procurement function for many Executive Office of the President organizational units, and that with recent procurement staff increases, they saw no reason why they could not provide the procurement/contracting service for the Council. They suggested that the Council would continue to provide technical expertise on scientific or technical aspects of procurements, when necessary.

AGENCY ACTIONS AND OUR EVALUATION

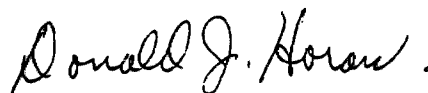
At a December 1980 meeting, Council officials presented us a draft of a proposed new contract manual and a copy of a job opportunity announcement to hire a contracting officer for the Council. Also, they said that they had ordered two sets of the Federal Procurement Regulations. According to the officials, contracting had been somewhat misunderstood and neglected since the Council's inception; however, such would not be the case in the future.

The new contract manual has been prepared in final form. Council representatives said that each member of the program staff has received a personal copy of the manual and has participated in a briefing and a question and answer session to ensure that he/she understands the manual and its requirements. Council officials said that the procurement procedures set forth in their new contract manual are designed to ensure that full documentation of the procurement process will appear in the new contract files. According to the Council officials, the Office of Administration's contracting officer and the Council's project officers will be responsible for maintaining fully documented files. The Council later canceled plans to hire its own contracting officer once it became apparent that the Office of Administration would perform procurement for the Council.

The Council's actions indicate that management has taken positive steps to increase competition in the procurement/contracting area. Actions, such as buying two sets of Federal Procurement Regulations and preparing a detailed contract manual to be followed by the Council staff, give credence to the Council's increased management attention and emphasis on this subject. Also, the Office of Administration's proposal to perform the Council's procurement will put the Council's procurement in compliance with the Executive order.

As a result of the Council's actions and the Office of Administration's stated direction and intention regarding the Council's procurement, we are not making recommendations at this time. Council and Office of Administration officials have reviewed and commented on the matters discussed in this report. We have included their responses where appropriate. Copies of this report will be provided to the Council and the Office of Administration.

Sincerely yours,



Donald J. Horan
Director