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UNITED STATES COMMISSION
FOR THE PRESERVATION OF AMERICA'S HERITAGE ABROAD

May 23, 2014

The Honorable Carolyn N. Lerner
Special Counsel
1730 M Street, NW - Suite 300
Washington, DC 20036-4505

Re: OSC File No. D1-12-3628

Dear Special Counsel Lerner:

This is in response to the April 7, 2014, email from OSC attorney Jennifer Pennington seeking clarification and an update of a few matters discussed in my reports to you of September 16, 2013, and March 18, 2014.

1. Ms. Pennington expressed concern that the Commission had not sought legal guidance from OPM and GSA in drafting a contract with Mr. Farrow, and that instead it had sought a legislative solution to the Commission's longstanding problems in obtaining services to pursue its mission. The Commission was following guidance from Congressional staff and senior OMB officials in pursuing this direction. However, based on Ms. Pennington's concern, the Commission has now been in consultation with both OPM and GSA for guidance on this issue.

We first contacted OPM and were directed to an OPM official who, after learning the details of our situation, deferred to GSA as the experts on government contractual and procurement issues. GSA assigned a contract specialist. We raised the issue of the Commission's inability to contract for needed services under its organic act. The specialist researched this question and confirmed the Commission's ability to procure services in the way that it has, i.e., it has been using the broad authority of federal agencies to micro-purchase services or goods through procurements below a certain dollar threshold.

Under these provisions of the FAR part 13.201(d), no written contract is required. Payments for micro-purchases may be made based, instead, on invoices. Based on what the GSA specialist confirmed, the arrangements with The Oliver Group over many years has consisted of weekly micro-purchases of administrative services. (Because the Commission cannot make payments directly, every payment is made by GSA. The GSA Financial Services Center will question the basis of payment if it thinks a contract or purchase order is necessary based on the requested expenditure.)

The Commission has used micro-purchasing to obtain needed services since the 1990s, before the tenure of my predecessor. The practice was instituted on the advice of Joel Barries, who had been a certified Federal contracting officer and who assisted the Commission for many years through another entity (as Mr. Farrow does today through The Oliver Group, Inc.).

When I became Chair of the Commission, I believed our arrangements with The Oliver Group and other service providers were permitted under the Commission's organic statute and other statutory and regulatory provisions as identified in my September report to you. Because of OSC's continuing concerns regarding this matter, it was necessary that we seek further clarification on our procurement practices. I now have a fuller understanding of the FAR guidelines as they apply to the way in which the Commission procures services. We have asked GSA for a formal opinion and confirmation regarding the details of these arrangements.

The Commission has also explored with GSA a possible alternative to our current practice. According to the contract specialist, GSA could use its own contracting authority and at least two contractor companies to subcontract for the necessary administrative and professional services. This alternative would significantly increase the Commission's costs because the Commission would likely be required to pay a fee to GSA in addition to the charges set by the two prime contractors. While this would be a burden on our small budget and would require that we cancel other needed expenditures, it could provide an interim solution while the pending legislative effort in the President's FY 2015 budget moves forward.

2. Ms. Pennington also expressed concern about "accountability" for Mr. Farrow's hours and services "under the current unwritten arrangement." As explained above, the advice we received from GSA indicates that the FAR does not require written contracts for micro-purchasing of services. Through the Oliver Group, Inc., Mr. Farrow continues to provide advice and assistance to me and the other members of the Commission, conducting research, drafting and reviewing documents, and representing the Commission and me before other agencies, the Executive Office of the President, the Congress, and foreign governments. The Oliver Group continues to provide this assistance on an intermittent basis. Mr. Farrow's schedule varies according to need, but the Oliver Group provides a substantial amount of services weekly, and he provides critical services as requested by me. We are regularly in contact several times a day on a seven-day-a-week basis. I know that the amount of time that Mr. Farrow spends on Commission business is extensive and productive and that it makes a valuable contribution to the Commission's operations. I personally certify receipt of the services in the case of each payment.

The Oliver Group continues to be paid for these services as indicated in the OIG Report. The terms are favorable for the Government, given the work performed,

which is noted in weekly invoices, and the rate that The Oliver Group charges other clients for Mr. Farrow's services. My predecessor has expressed to me a similar evaluation of Mr. Farrow's work for the Commission.

Further, the Commission through GSA pays The Oliver Group. The amount paid to this professional business firm cannot be considered to be the amount that Mr. Farrow ultimately receives from the firm for his Commission services. Entities providing services, especially corporations involving more than one person, have other costs of doing business that the Government routinely recognizes in its payments for services. Those other costs amount to the overhead involved in running a business (e.g., Social Security and Medicare taxes; health, life, and disability insurance; retirement plan contributions; business taxes and fees; office equipment, supplies and expenses).

3. Ms. Pennington, referring to the separate letter from the OIG, again raised questions regarding the end-of-the-year reservation of funds and alleged payments of bonuses to Mr. Farrow and others.

With respect to the footnotes in its Report, the only additional information that the OIG provided the Commission in a separate letter 1) concerned the total amounts of end-of-year compensation for two full-time, repeatedly-engaged but temporary non-employee service providers during two years in each case; 2) reported that the Commission also did not have written contracts with these or other individuals and firms providing personnel services; and 3) reiterated that funds were reserved in advance of the end of a fiscal year for possible expenditure that year.

As noted in my report of March 18, 2014, the end-of-year increase in rates for services provided by the two non-federal employee workers was authorized by my predecessor. This was done in lieu of permanent rate increases, which were warranted but which the Commission's small budget would not support on an on-going basis.

With respect to the reservation of funds near the end of the fiscal years, this practice is common in the Government. GSA, which processes all of the financial transactions for the Commission and a number of other small agencies, requires it because GSA would be unable to process all transactions during the very last days of a fiscal year on a timely basis. The practice is also needed because agencies are sometimes billed or pay in a subsequent fiscal year for goods or services provided the previous year. The governmental practice of reserving funds for subsequent payment involves sound budgetary planning.

Regarding the funds reserved in 2010 and 2011 for possible payment for Oliver Group services, it should be understood that the reservation documents were not

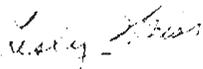
requests for payment and did not cause payments to be made. As the OIG noted in its report, there were not "any payments in the amounts on the forms . . . the largest single payment to the Oliver Group was \$1,981." Further, its investigation "did not substantiate the allegation that Mr. Farrow was paid bonuses." In reality, the amounts reserved in September 2010 and August 2011 were for no more than the continued services provided by The Oliver Group for the balance of each of the two fiscal years at the longstanding rates. The line items in the forms conformed to the GSA requirements for reservations of the maximum amounts that vendors might be due for goods or services from the dates of the GSA-specified deadline each fiscal year until the end of the fiscal year.

This addresses the questions that Ms. Pennington raised regarding Footnotes 1 and 2 of the OIG Report. Ms. Pennington has requested that we provide a copy of the OIG letter that addresses those footnotes. Because the letter lists other unrelated matters, including unsubstantiated and uninvestigated allegations against former Commission employees, I am attaching a redacted copy of that letter. As the IG explained, these other matters were "beyond the scope of its investigation." They are also outside the scope of the OSC referral.

I hope that this clarifies all questions about this matter. I have taken Ms. Ryan's (Krzysztofciak's) complaint very seriously. I recognize that this matter is complex because of the many allegations and the unique situation of this agency due to its independence and extremely small appropriation. If you find that there remain any deficiencies in the Commission's operations related to your referral, I request the opportunity to meet with you, Ms. McMullen, or Ms. Pennington to address those concerns.

Finally, Ms. Pennington requested that my email response of March 18, 2014, be submitted in letter form, signed by me. I have attached that letter.

Sincerely,



Lesley Weiss
Chair

Attachments