



U.S. OFFICE OF
SPECIAL COUNSEL
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UNITED STATES COMMISSION
FOR THE PRESERVATION OF AMERICA'S HERITAGE ABROAD

May 4, 2015

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

Re: OSC File No. DI-12-3628

Dear Special Counsel Lerner:

This is to provide a final report in response to your referral of April 16, 2013. My last report to you was on September 12, 2014. On October 2, Ms. Pennington responded to that report and requested further action on my part regarding the employment of the senior consultant. At her direction, I returned to the GSA for additional guidance. This report to you now focuses specifically on 1) the issues related to the Commission's work with GSA re: contracting with a senior consultant, and 2) new legislation that has expanded the Commission's contracting abilities.

GSA Approval of Commission's Contracting with Senior Consultant

Since my September 12, 2014, report to you, I have had extensive dealings with contracting officials and attorneys at the General Services Administration. Many of these consultations have been detailed in communications with your staff.

To review:

- I had been working with Contract Specialist Harvelle Fuller (Acquisition Management Division) who had been consulting with his supervisor, Elena Walker. GSA had agreed to use its broad contracting authority to provide the needed services for the Commission. Under this arrangement, GSA would solicit contractors on its own contracting schedule who would, in turn, subcontract for the services to the Commission.
- By September 16, I had made several minor changes to the Requisition Package on the advice of Mr. Fuller and Ms. Janis Anderson (Acquisition and Management Division). Their goal was to try to have an agreement with a prime GSA contractor by September 26.

- By late September, GSA informed me that it had selected an 8A contractor by sole source to fill our service needs.

Actions taken since September 2014:

- By October 2014, the chosen contractor had signed the agreement with GSA but had also inserted substantial cost increases and adjustments to the original contract. I was concerned about those changes and contacted GSA about this development.
- On October 21, Ms. Anderson informed me that she had been told that GSA would not, in fact, contract for the Commission using GSA's broad contracting authority. Instead, she explained, GSA could use only the Commission's limited contracting authority, and she suggested that the Commission could continue to pay for support services as it had been doing. That was not an option for the Commission, however, given OSC's position in the matter. After months of working with GSA, this decision seemed to undo the work that had gone before. I wrote to Ms. Lesly Wilson, the GSA attorney who had been advising me, and told her of these developments.
- Ms. Wilson responded that it was still possible to have GSA go forward with the contract, using the limited Commission authority under Section 3109. There also remained, according to Wilson, the option of the Commission itself contracting for support services using the guidelines and contract developed by GSA during this process.
- Based on these options, I decided to use the Commission's limited contracting authority to formalize the contract with the senior consultant. In the contract, I used the language that GSA had earlier recommended. The contract described a contractor paid hourly for a limited number of hours. The rate of pay was one that Contract Officer Anderson identified as the maximum that may be offered under the Commission's authority. It also ensured that no inherently governmental functions would be performed by the contractor. All these aspects of the contract represented those originally proposed and approved by GSA when it first agreed to handle the contracting for the Commission.
- On November 7, 2014, I spoke with Attorney Wilson about this matter and sent her the contract for her review and approval. (Mr. Reukauf forwarded a copy of this contract to Ms. Pennington on November 17, 2014.) On November 14, Ms. Wilson e-mailed to say that she was reviewing the contract and would get back me to as soon as possible. What followed was a frustrating period of time during which I received no feedback from Ms. Wilson.
- By December 15, Ms. Wilson informed me that she had requested information from a contracting officer but had not heard back from him.

- On January 15, 2015, I learned that Ms. Wilson had left the GSA General Counsel's Office without notice to me and without taking action on this matter.
- On January 16, I spoke with Seth Greenfield, GSA Senior Assistant General Counsel and asked for an expedited review of our request. On January 27, I heard back from Mr. Greenfield who told me that he would find a contracting officer who could help with our request.
- On February 10, he told me he had contacted GSA Contracting Officer Vincent Matner, and I followed up with Mr. Matner.

Mr. Matner told me in a phone call on February 19 that the contract we had submitted for review was the correct one to use and that he agreed with the Commission's use of it for our contracting needs. I asked Mr. Matner to send me his approval in writing. He did so on February 27. While he stated that what I had submitted was "a correct form to proceed with written contracts," he asked that I make the following changes:

The title changed from "Contractual [sic] Agreement For Personnel Services" to read "Contractual [sic] Agreement for Support Services", with the same change for item #2, "Agreement for Personnel Services" to read "Agreement for Support Services". In addition, add a paragraph 15 entitled "Contractor Limitations", and state thereunder: "The contractor is not permitted to provide direction and/or control of Government personnel. The contractor is not permitted to perform inherently governmental functions, and any review of confidential and public financial disclosures shall require the contractor to sign a Certificate of Non-Disclosure (USC Title 18, Section 1905)".

I made these changes to the contract.

On April 1, 2015, the Commission entered into a written contract with a service provider (the Oliver Group) for senior consultant services based on the language approved by GSA. This contract addresses the specific concerns OSC has raised regarding the title and nature of this position, the role and duties to be performed, including the limitations of this service, and the appropriate pay rate. In addition, the two full-time service providers signed contracts with the Commission at the same time. All contracts were drafted following the model recommended by GSA and reflect the changes directed and approved by Mr. Matner. [Copies of these contracts are attached.]

Changes in the Law Regarding the Commission's Contracting Authority

There has been a pertinent development in the law governing the Commission's contracting authority. On December 16, 2014, Congress enacted Public Law 113-235. This statute, among a myriad of other things, expanded the Commission's contracting authority. The law enables the Commission to procure services on other than a temporary and intermittent basis and not limited by 5 U.S.C. 3109(b) or the cap of the General Schedule. This was designed to enable the Commission, on an annual basis,

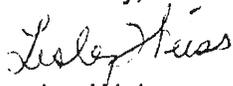
to enter into contracts that would engage the services of a consultant and the Commission's two full-time service providers.

Additionally, the President's Budget for Fiscal Year 2016 would authorize the Commission to appoint personnel to the federal service without using competitive service procedures. This is intended to enable the Commission to appoint the two full-time service providers to federal positions. OMB has also increased the Commission's FTE from one to three for this purpose.

I am hopeful that the above adequately addresses the remaining concerns your office has had regarding our contracting practices. As a result of this process, the change in the law, and the corrective actions I have taken, I now believe that the Commission will be able to function far more effectively and in compliance with Federal laws and regulations going forward.

Please advise me if you need anything further.

Yours truly,

A handwritten signature in cursive script that reads "Lesley Weiss".

Lesley Weiss
Chair