

October 1987

CONTRACTING

State's Administration of Certain Public Diplomacy
Contracts





National Security and
International Affairs Division

B-229069

October 30, 1987

The Honorable Jack Brooks
Chairman, Committee on
Government Operations
House of Representatives

The Honorable Dante B. Fascell
Chairman, Committee on
Foreign Affairs
House of Representatives

In response to your request dated March 31, 1987, this report provides the results of our assessment of contracting activities at the Department of State's Office of Public Diplomacy for Latin America and the Caribbean (LPD).

LPD was established at the Department of State in mid-1983 by a White House decision memorandum for the Special Planning Group.¹ LPD is an "interagency office" and has been staffed by personnel from the military services, the U.S. Information Agency, the Agency for International Development, and other offices within the Department of State. The office has regularly interacted with other government offices, including the National Security Council.

LPD's stated goal is to promote a better understanding of U.S. policy toward Latin America and the Caribbean. Its activities have been directed at educating, informing, and influencing foreign and domestic audiences on the administration's foreign policy objectives in Latin

¹The Special Planning Group, under the National Security Council, was established by a National Security Decision Directive in January 1983. The group was tasked with the overall planning, direction, coordination, and monitoring of the implementation of public diplomacy activities relative to national security.

America. The former Coordinator² of the office described the public diplomacy objective towards Congress as one directed "to gain sufficient bipartisan support in Congress to permit approval of increased assistance, economic and military, to Central America and to preclude crippling restrictions on actions in support of US policy objectives in the region."

In carrying out its objectives, LPD contracted with numerous individuals and several companies, mostly for written products. We found that, in doing so, LPD generally did not follow federal regulations governing contractual procedures. Specifically:

- The justifications to support the exclusive use of sole-source contracting by LPD were inadequate.
- Various other procurement requirements were not adhered to in awarding contracts, such as encouraging competition, obtaining required contract officer approvals before engaging contractors, and, in one case, abiding by limitations on the salary paid to a retired military officer.
- Many products were different from those contracted for with no evidence that agreement was reached on changes to contract specifications.

In our evaluation of LPD's use of contractors, we reviewed 25 contracts entered into since the office was established and valued at approximately \$263,000. All were for professional services. Most of the contracts were for written products dealing with conditions and U.S. policy in Latin America. However, few of the contractor's products were directly incorporated into LPD publications.

No similar contracts have been initiated by LPD since February 1986. In March 1986, LPD was transferred from the Office of the Secretary of State to State's Bureau for Inter-American Affairs and a new Coordinator was appointed.

The only LPD professional service contracts we did not review were those under separate investigation by the Congress and the Department of State's Office of the Inspector General. These separate investigations include contracts awarded to International Business Communication.

²The person directing LPD's efforts is designated as Coordinator to reflect the interagency character of the office. Since its establishment, LPD has had two Coordinators.

Inc., the Institute for North-South Issues, and to Mr. Frank Gomez.

Details of our review are provided in appendix I. We discussed the facts and circumstances surrounding the 25 contracts we examined with the current and the former Coordinators of LPD and have included their comments as appropriate. The current Coordinator said that, because the contracts reviewed covered the period prior to his appointment, he was not able to offer substantive comments. The former Coordinator said that he was generally unfamiliar with the details related to the office's contracting procedures. Instead he relied on his staff as well as State's procurement office to ensure that federal regulations were adhered to. As requested, we did not obtain written comments.

Unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its date. At that time, we will send copies to the Department of State, the Office of Management and Budget, and other interested parties.



Frank C. Conahan
Assistant Comptroller General

LPD'S CONTRACTING PRACTICES
DID NOT COMPLY WITH FEDERAL REQUIREMENTS

The Office of Public Diplomacy for Latin America and the Caribbean (LPD) was established in June 1983 by a White House decision memorandum. Its creation reflected the President's concern that efforts be made to deepen the understanding of and support for the administration's policies in Central America. The efforts were intended to be focused on foreign, as well as domestic, audiences. The purpose of LPD activities was to inform, educate, and influence the public on U.S. foreign policy issues in the region.

Until February 1986, LPD awarded many professional service contracts¹ and relied heavily on them to carry out its mission. Our review of those contracting activities showed that government regulations for contract administration were not followed. LPD did not adequately support its exclusive use of sole-source contracts. Other procurement requirements to ensure competition and to limit compensation were also not followed. In addition, most of the contractors' written products we reviewed were substantially different from the respective contract's original scope of work, and few were incorporated directly into LPD publications.

LPD'S ORGANIZATION AND ACTIVITIES

From its inception in mid-1983, LPD has been an interagency effort with personnel and support staff from the military services, the U.S. Information Agency, the Agency for International Development, and other offices in the Department of State. LPD was originally placed under the Office of the Secretary of State.

In March 1986, LPD was transferred from the Office of the Secretary of State to State's Bureau of Inter-American Affairs and placed under a new Coordinator, the Deputy for Policy and Public Affairs. One of the reasons for and benefits of the move, according to the current Coordinator, was to integrate the office more fully into State's operations. This also allowed the office to obtain resources more readily from other offices in the Bureau.

LPD addressed its mission in part by arranging speaking engagements for State Department officials, producing publications for domestic and international distribution, and participating in special projects--such as an arms display of weapons captured from Salvadoran guerrillas. From October 1983 through November 1984, LPD and State's Office of Public Affairs scheduled speaking engagements and interviews in hundreds of cities. LPD also

¹Most of the contracts we examined were valued at less than \$10,000 and are, for purposes of certain federal regulations, called "purchase orders." For purposes of this report we refer to them as contracts.

distributed publications to an extensive audience, including the private sector, key government officials, and U.S. ambassadors and embassy political section chiefs in Latin American and European countries.

Use of Contractors to Address LPD Mission

Although these types of activities (i.e., speaking engagements, production of publications) continue, LPD's use of contractors has been substantially reduced since the office was moved and the new Coordinator was appointed. Prior to that time, contractors were used extensively. According to the former Coordinator, this was necessary to "...accomplish the voluminous research, production of special papers, and media exposure necessary to carry out our mission, all the while keeping our office team small and manageable." The nature of some of the LPD contractor activities became a source of media attention and, subsequently, the subject of congressional and administration inquiries.

During the first 6 months of LPD's existence, four officers on average (including the Coordinator) staffed the office. From January 1984 until January 1986, LPD employed 13 professional staff, on average. Even with the increase in professional staff, LPD continued to rely heavily on professional service contracts. The former Coordinator stated that this was necessary because LPD's work increased at a greater rate than did the staff to address the demands.

LPD has not initiated any new professional service contracts since February 1986. The only contract carried over is with the U.S. Air Force for a clippings service on news events related to Latin America and the Caribbean. The office currently functions with an average of 10 professional staff. The duties of former contractors have been absorbed within LPD. For example, the functions of a media consultant/intelligence analyst, previously performed by contract, are done by the Coordinator and his deputies. Publications are also written without contractors. The mailing list, developed by contract, is being maintained by LPD personnel.

REQUIREMENTS FOR CONTRACT ADMINISTRATION WERE NOT FOLLOWED

Our review focused on the administration of LPD professional service contracts awarded from mid-June 1983 to February 1986. We reviewed 25 contracts with a total value of approximately \$263,000. We found that LPD generally did not follow federal requirements and procedures governing contract award and administration.

Sole-Source Contracts Were Inadequately Supported

We found that LPD did not adequately support its exclusive use of sole-source contracts. Also, the reviewing officials in State's Office of Operations/Supply, Transportation, and Procurement (OPR/STP) did not carry out their responsibilities to ensure that other federal procurement requirements for those contracts were met.

The Competition in Contracting Act of 1984 (CICA) requires federal agencies to use competitive procedures except under limited circumstances.² An exception for sole-source contracting is permitted when a reasonable basis exists to conclude that an agency's minimum needs can be satisfied only by unique supplies or services available from a sole source or sole-source supplier with unique capabilities. Contracting on a sole-source basis must be supported in writing. When an agency believes that there is only one source, the written justification must include information demonstrating that the proposed contractor's qualifications are truly unique and a description of the efforts made to ensure that offers are solicited from as many potential sources as is practicable. Sole-source procurements may not be justified on the basis of a lack of advance planning by the procuring activity.

CICA also permits agencies to use simplified procedures for small purchases.³ These procedures require maximum practicable competition under the circumstances of the procurement. If only one source is solicited, the procurement file should contain a notation explaining the absence of competition. Most of the files we reviewed were below the dollar threshold for small purchases.

All 25 of LPD's sole-source justifications contained the same two defects. First, they did not explain how the writers selected were unique and why no one else could perform the desired requirements. The justifications set forth the qualifications that are required to perform the task; however, they did not demonstrate that the particular contractor was the only individual qualified. Second, they did not describe any efforts that were made to ascertain whether other equally qualified writers were available.

²41 U.S.C. § 253. The effective date of CICA was April 1, 1985. Its provisions regarding the circumstances permitting sole-source procurements are similar to previously applicable regulations.

³Small purchases, until February 24, 1984, were considered under \$10,000. After that time the threshold was increased to \$25,000.

Other Procurement Requirements Were Not Followed

Various other regulations governing the acquisition process were not adhered to by LPD or OPR/STP in contracting out for services. We found that LPD virtually eliminated competition in contract award procedures, engaged the services of contractors before required approvals were obtained, and awarded several contracts to an individual that circumvented pay limitations for retired military officers.

According to contracting officials in OPR/STP, they find it difficult to be knowledgeable of alternative sources for the types of services required by LPD. That is, unlike procuring equipment from various established manufacturers, it is more difficult to be aware and evaluate the quality of a prospective author's ability to produce an authoritative statement about a subject related to activities in Latin America. According to these officials, the lack of knowledge about alternatives inhibited their efforts to locate potential competitors.

In addition to the difficulty associated with identifying alternative sources, OPR/STP officials felt that they were under considerable pressure by LPD to accept the sole-source recommendations. For example, contracting officials provided us with various documents from high-level government officials that stressed the importance of LPD's activities. Such documents, according to the contracting officials, were used to support LPD's requests for expedited handling of their sole-source procurements.

The former Coordinator disagreed with OPR/STP officials' view that LPD applied pressure to obtain acceptance of its sole-source recommendations. He noted that, while he tried to get priority processing for LPD's requests because of the urgency he felt in addressing the office mission, he never intended that procurement regulations be bypassed.

Little effort to identify competition

We found little evidence in LPD or OPR/STP files to indicate that any effort was made to locate other sources to compete on LPD contracts. CICA provides that while competition may be restricted for reasons of unusual and compelling urgency, the contracting officer must solicit offers from as many potential sources as is practicable. Even a sole-source procurement requires such an effort to help support the sole-source justification.

For sole-source procurements exceeding \$10,000, CICA requires synthesizing the proposed contract in the Commerce Business Daily.

encourage competition.⁴ Of the contracts we reviewed, eight were above \$10,000 and should have been synopsisized and published. Yet, in only one instance did OPR/STP give notice of its intended sole-source procurement in the Commerce Business Daily.

For the contracts valued at less than \$10,000, some effort is required to locate alternative sources even if that effort consists of no more than a few telephone inquiries. The Federal Acquisition Regulation (FAR), part 13, which sets forth small purchase procedures, requires that for oral solicitations, the contracting office establish and maintain records of suppliers contacted and the prices and other terms and conditions quoted by each. We found no evidence in the contract files, however, to indicate that such efforts were made.

With one exception, we found no attempts by LPD or OPR/STP to locate competitive sources for LPD. The exception was a contract for a media consultant/intelligence analyst which LPD wanted to issue as a sole-source procurement. In April 1985, after receiving an advance planning document from LPD, OPR/STP attempted to fill the requirement through competition. At the time, these services were being provided by Mark Richards Associates, Inc. (MRA). MRA had performed this function under various sole-source contracts since July 1984, and LPD sought to continue the arrangement.

Using the LPD planning document, OPR/STP located another source interested in competing for the work. According to information in the contract files, however, LPD withdrew its requirement for these services before this potential contractor could be interviewed. A few months later, in September 1985, LPD requested the continued services of MRA, citing "unusual and compelling urgency" as the basis to award a sole-source procurement. LPD also added that the character and sensitivity of the services precluded disclosure of the contractual arrangement to the public.

According to OPR/STP contracting officials, it appeared that delaying the announcement of a known and intended procurement was used by LPD to apply additional pressure on OPR/STP to approve the sole-source procurement for MRA. This technique conflicts with CICA, which states: "In no case may an executive agency...enter into a contract for property or services using procedures other than competitive procedures on the basis of the lack of advance planning...."

Regarding the sensitivity of the services to be performed, a State Department legal advisor noted that "...it is plainly inconsistent for...LPD to assert in an unclassified draft sole source justification that these contract arrangements should not be

⁴41 U.S.C. §416. There was a similar requirement before CICA was enacted.

disclosed to the public." The contracting officer concluded that "...through advance procurement planning prior to expiration of the new contract on September 30, 1986, the entire competitive procurement process will be initiated to assure full and open competition." However, LPD began performing the function in-house after completion of the contract.

Some work apparently begun
before contracts were issued

FAR requires that "no contract shall be entered into unless the contracting officer ensures that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met."

In three procurements, contractor work was apparently begun before being approved by OPR/STP. In effect, OPR/STP had to ratify the work after it was begun. In one instance, the contracting officer approved the requisition on January 6, 1984, for the production of a paper that was to be completed 5 days before; the contractor's paper was dated December 20, 1983. Another requisition specified that the contract period was to run from December 10 to December 24, 1984. The request was not submitted, however, until December 19 and was not approved until February 9, 1985. It appears that the contractor began work prior to contract approval. In a third instance, a note in LPD's contract file for a particular contractor said that "OPR/STP needs the date [the contractor] will perform services. As we know, he has already performed them."

In the first two instances, rather than advising LPD that its actions were counter to contracting procedures, the contracting officer appears to have approved the acquisitions without comment. In the third instance, it is unclear whether OPR/STP was ever aware of the note indicating that the services were performed prior to a contract being issued.

Contracts avoid
pay cap limitations

Two Office of Management and Budget (OMB) circulars restrict the use of contracts to avoid salary limitations for former government employees. In a series of contracts with MRA, LPD did not adhere to those requirements. A total of approximately \$136,000, or over 50 percent of the value of the contracts we reviewed, was paid to MRA. The company is owned and operated by retired Colonel Mark Richards.

The OMB circulars require that

- functions previously performed by government employees shall not be converted to contract solely to avoid personnel ceiling or salary limitations;⁵
- consulting services are normally to be obtained only on an intermittent or temporary basis, repeated or extended procurements are not to be made,⁶ and consulting services are not to be used to circumvent pay caps and other pay limitations; and
- consulting service contracts will be competitively awarded to the maximum extent practicable to ensure that costs are reasonable.⁷

Colonel Richards was detailed to LPD in January 1984. He became a Senior Advisor on the staff of LPD. As a staff member of LPD, he was responsible for providing information to the media, reviewing cable traffic from U.S. embassies in Central America for information useful to LPD, reviewing the content of LPD publications for accuracy, and developing press kits for the media. When the Coordinator learned of Colonel Richards' impending retirement from the Air Force in July 1984, he decided to retain his services at LPD.

As a military retiree, Colonel Richards would be subject to dual compensation limitations if employed as a consultant (5 U.S.C. §5532). This would reduce his military retirement pay. According to Colonel Richards, the reduction was unacceptable.

Accordingly, Colonel Richards incorporated himself, and the State Department negotiated a sole-source contract with MRA for media consultant services. Colonel Richards retired on June 30, 1984, and began work as a media contract consultant on July 1, 1984. Between July 1984 and February 1986, LPD awarded MRA four short-term contracts allowing him to serve continuously on the LPD

⁵Section 7c (6), OMB Circular No. A-76 Revised, August 4, 1983, Subject: Performance of Commercial Activities.

⁶Section 6 b-d, OMB Circular No. A-120, April 14, 1980, Subject: Guidelines for the Use of Consulting Services.

⁷Section 8, OMB Circular No. A-120.

staff.⁸ This permitted him to continue working for LPD without a reduction in his retirement pay. According to Colonel Richards, he performed the same job he did while he was on detail. His supervision, clerical support, access to files, and working hours at the State Department were the same.

Many Contract Products Differed
From Contract Scope of Work

LPD made extensive use of professional service contracts to obtain written products from individuals outside of government. Justification for the use of the contractors was based on their unique insights or expertise on Latin America, which LPD asserted was not available in-house. Of the 25 contracts we reviewed, 16 specified one or more original written products (41 in all).⁹ Most of the contractor products we were able to obtain, however, differed substantially from the contract scope of work. According to LPD personnel, few were incorporated into LPD publications.

Our analysis was hampered by the lack of products in LPD files. Through a file search and some contacts with previous contractors, we were able to obtain 28 of the 41 research papers. According to a State contract specialist, OPR/STP recently addressed this problem by requiring copies of final products for its contractor files.

Sole-source procurements were used to obtain the services of each contractor, and their use was justified on the basis of (1) unique abilities and expertise and (2) LPD's urgent need for the specified product. However, only 13 of the 28 products we obtained addressed the topic specified in the original scope of work. In the other cases, the product for which there was an "urgent need" was not produced; rather, a substitute topic was addressed.

For example, the scope of one contract specified topics for four research papers. None of the papers were written. Instead, a number of substitute products were produced on topics not specified in the scope of work. For instance, in place of one paper on "Cuban and Nicaraguan Involvement in Drug Trafficking," the contractor wrote (1) a memorandum on the "World Court and Nicaragua," (2) an editorial on "Morality and the Central America Issue," and (3) a paper entitled "The Managua Connection: The Sandinistas and Middle Eastern Terrorists." We found no justification that the contractor selected as uniquely qualified to

⁸The last contract for MRA expired September 1986.

⁹Several types of products were requested in the contracts. Most were research papers, but short articles and essays were specified in some contracts. These are not included in the product total.

write on the original topic was also uniquely qualified to write on the new topics. We also found no contract modification to reflect a change in the product or evidence that attempts were made to find the necessary expertise elsewhere. This example was typical of the other cases in which the contractor product differed from the contract's original scope of work.

According to the former Coordinator, the need for contractors was crucial in the office's early days before LPD built a staff and expertise in Latin American public diplomacy. We found, however, that of the 13 LPD publications issued during its initial 18 months (through the end of 1984), only 2 were based on the work of LPD contractors. The former Coordinator commented that contractors' work on formal publications is not, by itself, a comprehensive indicator of contractor contributions since they also worked on other products, such as speeches and background materials. However, we noted that these types of products were not in LPD's files and, in most instances, were not in the respective contract's scope of work.

COORDINATORS' COMMENTS

The current LPD Coordinator told us that he was unable to comment on the facts and circumstances surrounding the 25 LPD contracts we examined because they related to events which occurred prior to his appointment. The former Coordinator noted that, even though he was in charge of LPD when the contracts covered in our review were awarded, he was generally unfamiliar with their details. In all cases, including those in which he was more knowledgeable, the former Coordinator commented that he relied on his staff, as well as OPR/STP, to ensure that all procurement requirements were met. He added that approval of the contracts by OPR/STP was an indication to him that all regulations had been dealt with properly.

OBJECTIVES, SCOPE, AND METHODOLOGY

We examined the operations of LPD to determine the extent to which LPD used contractor services and whether contract awards were made in accordance with federal acquisition requirements. In all, we examined the circumstances related to 25 LPD contracts for professional services. The only LPD professional service contracts we did not review were the seven under separate investigation by the Congress and the Department of State's Office of the Inspector General. These seven contracts had been awarded to International Business Communications, Inc., the Institute for North-South Issues, and Mr. Frank Gomez.

We interviewed LPD personnel, including some past officers, and contract officials in OPR/STP. In addition, we interviewed some individuals who had been under contract with LPD to discuss their products and how they were ultimately used. We also examined LPD contractor and related files as well as those maintained by OPR/STP.

to ascertain whether LPD and contracting officials complied with federal acquisition requirements.

In a separate letter to you, we provided our legal opinion on whether LPD violated statutes prohibiting certain lobbying and propaganda activities.¹⁰ In that opinion, we concluded that LPD had violated a restriction on the use of appropriated funds for publicity or propaganda purposes. The former Coordinator disagreed with that conclusion but has not provided any information which would cause us to change our position.

Our review was conducted from April to September 1987. Because the primary focus of our review was on LPD's administration of its contracts, we did not evaluate State's internal controls governing contracting. We are, however, conducting a separate assessment of State's procurement function, including sole-source awards. Except for this limitation, our review was conducted in accordance with generally accepted government auditing standards.

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¹⁰B-229069, September 30, 1987.