



The Library of Congress
Office of the Inspector General



**Office of Contracts and
Grants Management**

*Review of the Sole Source
Award to Power Tech, Inc.*

Inspection Report No. 2010-CA-102
September 2010



UNITED STATES GOVERNMENT

LIBRARY OF CONGRESS

Memorandum

Office of the Inspector General

TO: James H. Billington
Librarian of Congress

September 30, 2010

FROM: Karl W. Schornagel
Inspector General

SUBJECT: Review of the Sole Source Award to Power Tech Inc.
Project No. 2010-CA-102

The Office of the Inspector General (OIG) has completed a review of the sole source contract award to Power Tech Inc., contract no. LCITS10P0146. This review was initiated as a result of a hotline complaint received by the OIG. This report provides the results of our review into the complaint. The executive summary begins on page *i* and the results of our review appear on pages 4 to 7.

Based on the written comments to the draft report, we consider all of the recommendations resolved. Please provide, within 30 calendar days, an action plan addressing implementation of the recommendations, including implementation dates, in accordance with LCR 211-6 §11.A.

We appreciate the cooperation and courtesies extended to our staff during this review by the Office of Contracts and Grants Management.

cc: Chief of Support Operations
Chief of Staff
Acting Chief, Office of Contracts

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▶▶ EXECUTIVE SUMMARY

In May 2010, the Office of Contracts and Grants Management (OCGM) awarded a sole source contract to Power Tech Inc. (Power Tech). The purpose of the contract was to provide battery maintenance for the Library telephone system's back-up batteries. In July 2010, the Office of the Inspector General received a complaint against the contract award to Power Tech. The complainant alleged that a Library contracting officer inappropriately sole sourced the contract to Power Tech to streamline the procurement process.

This report provides the results of our review of the Power Tech award. Our objective was to determine the validity of the allegation that a Library contracting officer inappropriately used sole source authority to award a contract to Power Tech in order to streamline the procurement process.

We concluded that the informant's allegation is valid to the extent that the sole source acquisition was not satisfactorily justified. However, information available regarding pre-contract award activity does not confirm that the contracting officer used sole source authority to streamline the procurement process. Our conclusions are based on the following factors.

- The sole source justification for the acquisition was not competently evaluated before it was approved to support the contract award;
- The contract award made by the contracting officer was primarily based on a sole source justification that was approved by the Library's competition advocate; and
- The price proposed for the contract by Power Tech had not been adequately analyzed and determined to be fair and reasonable before the contract was awarded.

We recommend that OCGM establish a quality assurance process that ensures 1) solicitations are accurate and complete, and 2) offered prices are evaluated for reasonableness.

Furthermore, we recommend that OCGM replace the existing

competition advocate with a competent person with extensive experience in federal procurement law.

Management concurred with our recommendations. The full text of management's response is included as an appendix.

▶▶ BACKGROUND

On July 6, 2010, the Office of the Inspector General (OIG) received a complaint against the contract award to Power Tech, Inc. (Power Tech) alleging that the contracting officer inappropriately sole sourced the contract to streamline the procurement process. The contract awarded to Power Tech was for maintenance to the back-up power infrastructure supporting the voice network systems throughout the Library. Power Tech installed the back-up power infrastructure throughout the Library's facilities in 2006 and 2007, and has provided the annual maintenance needed to the back-up power infrastructure for the past two years.

On February 27, 2010, the Office of Contracts and Grants Management (OCGM) received the requisition for battery maintenance for the period May 1, 2010 through April 30, 2011. The requisition qualified as a simplified acquisition and normally involved soliciting at least three vendors to promote competition. The Request for Quotations (RFQ) was posted on the Federal Business Opportunities (FedBizOpps) website on April 5, 2010 and emailed to the incumbent vendor who received the battery maintenance contracts the previous two years. According to the RFQ, the award was to be made to the lowest-price, technically-acceptable offeror.

OCGM received three quotes and submitted them to the procuring service unit, Information Technology Services' Technical Facilities and Services (TFS), to determine if they were technically acceptable. On April 26, TFS submitted to OCGM a sole source justification for the incumbent vendor. OCGM's competition advocate approved the sole source justification on April 29, 2010.

On April 29, 2010, the contract specialist notified the other two solicited vendors that their quotations were unsuccessful. On May 4, 2010, OCGM awarded Power Tech a sole source contract for battery maintenance services. On May 7, 2010, the vendor with the lowest quote requested a formal debriefing. On May 19, 2010, the contracting officer, contract specialist, and the Director of OCGM discussed the cause for the vendor's request for a debriefing. They concluded that the procurement was flawed because the contract specialist failed to (1) cancel the competitive solicitation on FedBizOpps following receipt of the sole source justification and (2) post a

notice of intent to issue a sole source for the contract on FedBizOpps. On July 21, 2010, the OIG informed OCGM of its intent to review the sole source award to Power Tech. On July 26, 2010, OCGM issued a no-cost-cancellation for the Power Tech contract.

►► OBJECTIVES, SCOPE, AND METHODOLOGY

Our objective was to determine the validity of an allegation that a Library contracting officer inappropriately used sole source authority to award a contract to Power Tech in order to streamline the procurement process. To address our objective, we evaluated the performance of two critical procedural actions—the approval of the sole source justification and the analysis of Power Tech’s proposed contract price—which responsible OCGM personnel were required to take prior to contract award to support the sole source acquisition. We also evaluated the facts and circumstances which pertained to the contract’s pre-award activities.

We used criteria in OCGM’s Contract Operating Instruction on Simplified Acquisitions (Instruction No. 1026) and in the Federal Acquisition Regulations (FAR) on Competition Requirements (Part 6), Simplified Acquisition Procedures (Part 13), and Contracting by Negotiation (Part 15) in performing various evaluations. Additionally, we interviewed responsible OCGM officials and reviewed documentation related to the Power Tech procurement, including the sole source justification, solicitation documents, and other relevant documents in the contract files. Although the FAR generally does not apply to the Library’s procurement actions, OCGM has adopted certain portions as guidance.

We performed our review work from July 21 through September 17, 2010, in accordance with the Quality Standards for Inspections issued by the President’s Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency, and Library of Congress Regulation (LCR) 211-6, *Functions, Authority, and Responsibility of the Inspector General*.

▶▶ RESULTS OF REVIEW

In a complaint to the OIG, a confidential informant alleged that a Library contracting officer inappropriately used sole source authority to award a contract to Power Tech in order to streamline the procurement process. We concluded that the informant's allegation is valid to the extent that the sole source acquisition was not satisfactorily justified. However, information available regarding pre-contract award activity does not confirm that the contracting officer used sole source authority to streamline the procurement process. Our conclusions are based on the following factors.

- The sole source justification for the acquisition was not competently evaluated before it was approved to support the contract award;
- The contract award made by the contracting officer was primarily based on a sole source justification that was approved by the Library's competition advocate; and
- The price proposed for the contract by Power Tech had not been adequately analyzed and determined to be fair and reasonable before the contract was awarded.

The following sections provide our explanations of the factors identified above and an additional issue we identified that involved a breakdown in an important contract solicitation procedure.

a. Unsatisfactory Sole Source Justification

We concluded that the confidential informant's allegation is valid to the extent that the sole source acquisition was not satisfactorily justified. We based that conclusion on our finding that the sole source justification for the acquisition was not competently evaluated before it was approved to support the contract award.

Federal agencies are generally required to award contracts on the basis of full and open competition. However, they may award noncompetitive contracts in some situations if certain procedural actions are taken. One critical action that must be

taken before a noncompetitive award is made is the review and approval of a sole source justification.

For the Power Tech procurement, TFS prepared and submitted a proposed sole source justification to OCGM. The proposed justification was provided to the Library's competition advocate for review and approval. After the competition advocate approved the justification, it was provided to the contracting officer for the procurement. Based primarily on the approved justification, the contracting officer used sole source authority to award a noncompetitive contract to Power Tech.

We determined that the competition advocate did not satisfactorily review the proposed sole source justification before she approved it. She did not confirm the accuracy of statements in the proposed document and her approval was based solely on the claim that Power Tech was the only vendor that could perform the needed maintenance services. In an explanation of her mistake, the competition advocate informed us that she had experience neither with federal procurement laws nor the qualifications needed to perform the duties and responsibilities of a competition advocate.

Despite the existence of a competition advocate, the authority to award a contract belongs to the contracting officer. Although the contracting officer for the Power Tech procurement had an approved sole source justification to use as his basis for the contract award, it appears that the officer did not take reasonable steps on his own to confirm the accuracy of the justification before he relied on it.

b. The Proposed Contract Price was not Analyzed

The FAR requires that supplies and services be purchased from responsible sources at fair and reasonable prices, and identifies various price analysis techniques. However, a contracting officer has wide discretion in determining appropriate price analysis methodology. Nevertheless, in making a determination of the form and extent of price analysis to use, the officer should take into consideration the nature of and potential risk involved in the procurement.

For the Power Tech procurement, we determined that the price proposed for the contract by the prospective contractor

had not been adequately analyzed by the contracting officer and/or the assigned contract specialist before the contract was awarded. The contracting officer's price analysis consisted of comparing Power Tech's proposed price to its 2009 price. Based on this comparison, the contracting officer concluded that Power Tech's price was fair and reasonable. The contracting officer failed to consider the other two offers received which were significantly less than Power Tech's offer. As a result, the Library had no assurance that the price at which the contract was awarded was fair and reasonable.

c. Breakdown in a Contract Solicitation Procedure

The heart of a contract is the statement of work (SOW). It establishes a description of the needed goods or services, criteria for inspecting and accepting goods or services provided, and a baseline for contract performance upon which initial pricing and scheduling are predicated. Accordingly, it is essential that the content of a SOW be complete and adequate. The Power Tech procurement was originally initiated as a competitive acquisition. As such, OCGM posted a RFQ for the procurement on the FedBizOpps website.

We determined that the SOW for the Power Tech procurement was incomplete in the RFQ that was posted on FedBizOpps. As a result, it was virtually impossible for potential vendors to submit offers that would meet the service opportunity's pricing and/or technical requirements. Moreover, the incomplete SOW may have limited the number of vendors interested in competing for the service opportunity.

At no time did the contracting officer or contract specialist review the SOW of the RFQ despite indications that the solicitation was flawed. Specifically, there were major discrepancies in the quotes that were submitted in response to the RFQ and a letter submitted to OCGM by the incumbent vendor stated that significant maintenance work requirements were missing from the contract.

In our view, the failure to review the completeness and accuracy of an RFQ represents a serious breakdown in an important contract solicitation procedure. It is imperative that OCGM management promptly determine if such a failure is common in processing Library RFQs and if so, make

appropriate changes in office procedures to prevent the failures from happening in the future.

Recommendations

We recommend that OCGM:

1. Establish a quality assurance process that ensures
 - a. solicitations are accurate and complete, and
 - b. offered prices are evaluated for reasonableness.
2. Replace the existing competition advocate with a qualified person with extensive experience in federal procurement law.

Management Response

Management concurred with our findings and recommendations.

» CONCLUSION

We undertook this review in response to the complaint that we received from the confidential informant to determine whether the OCGM acquisition team, including the contracting officer, competition advocate, and contract specialist, had appropriately applied required procedures to support the sole source contract award to Power Tech. The principal conclusions of our review are that 1) the informant's allegation is valid to the extent that satisfactory justification for the sole source acquisition had not been established at the time that the contract was awarded to Power Tech; and 2) the contracting officer did not establish that the price proposed by Power Tech to perform the contract-required services were fair and reasonable. Based on these conclusions, we determined that the sole source contract award for Power Tech's services should not have been awarded.

Major Contributors to This Report:

Nicholas Christopher, Assistant Inspector General for Audits

John Mech, Lead Auditor

Elizabeth Valentin, Auditor

▶▶ APPENDIX A: MEMORANDUM FROM MANAGEMENT

UNITED STATES GOVERNMENT

Memorandum*Office of Contracts and Grants Management
The Library of Congress*

DATE: 09/29/2010

TO: Karl W. Schornagel
Inspector GeneralFROM: Robert L. Williams 
Acting Chief, Office of ContractsSUBJECT: Response to Recommendations in Draft Report No. 2010-CA-102,
Review of the Sole Source Award to Power Tech, Incorporated.

This memo is in response to your audit findings and recommendations regarding the sole source contract award to Power Tech.

Recommendation 1:**Establish a quality assurance process that ensures**

- a. solicitations are accurate and complete,
- b. offered prices are evaluated for reasonableness.

I agree. As Acting Chief, I now serve as the Source Selection Authority and final approver. Currently, all solicitations over \$100K are reviewed by the Contracts Review Board which is made up of three warranted contracting officers and is chaired by the Acting Chief. The Board reviews all Sole Source Justifications (SSJ), including the evaluation of rationale used for the determination that a price is fair and reasonable. While the comparison of prior and proposed vendor pricing is a legitimate process, it will not be the only resource consulted to make a defensible determination in a sole source environment. I also intend on implementing a similar review mechanism for those procurements under \$100K during FY11.

Recommendation 2:**Replace the existing competition advocate with a qualified person with extensive experience in Federal procurement law.**

I agree with this recommendation.

cc: Lucy Suddreth
Aditya McDuffy
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