

Statement of Robert Dizard Jr.
Deputy Librarian of Congress
Before the
Subcommittee on Oversight, Committee on House Administration
“Library of Congress: 2012 Inspector General Report on Library-Wide Acquisitions”
U.S. House of Representatives
Thursday, July 19, 2012

Chairman Gingrey, Ranking Member Lofgren, Members of the Subcommittee, my testimony today will review the work the Library has undertaken in the past two years to develop an efficient and stable contracting operation, a need again emphasized in a report issued by the Library’s Inspector General in March 2012 titled “Library-Wide Acquisition Function.”¹ I fully appreciate the Committee’s concerns about the issues noted in the report and the need for senior management of the Library to show that these issues are being effectively addressed.

I am joined today by Lucy D. Suddreth, the Library’s Chief of Support Operations, in whose service unit the Office of Contracts has been located and who has overseen much of the work outlined in this testimony.

Library Contract Activities and Administration

As with all agencies, the Library depends on contracts for goods and services to support our mission. With the key exception of purchases for the collections, which are handled by librarians in the Acquisitions and Bibliographic Access directorate, the Library’s procurement is handled by the contracting officers in the Library’s Office of Contracts and Grants Management.²

Last fiscal year, approximately 30.6 percent of our total budget of \$671.5 million was spent on contracts issued by the Contracts Office. Some of the services and goods we contracted for in Fiscal Year 2011 include:

- Mass deacidification of books and manuscripts. This is a three decades-long program to extend the useful lives of our more brittle items by as much as 300 years by putting them through a treatment process to remove acidity in the paper.

¹ In the Library, “acquisition” is a term of art that refers only to building the collections, through purchase, subscription, gift, etc. Rather than using “acquisition” in the generic Federal sense, we refer to all non-collections contracting as “contracting” or “procurement.” The IG report addressed the contracting function, not acquisition of collections.

² There are other minor exceptions to the requirement that non-collections contracts go through the Contracts Office, for example: the Congressional Research Service has statutory authority to issue its own contracts for expert services (2 U.S.C. § 166(h)); the Music Division deals directly with the performers in the Library’s concert series; and the IG has authority to contract directly for audit services.

- The manufacture of digital talking book machines and the production of digital book and magazine recordings for the use of blind and physically handicapped Americans across the country.
- Our custodial services.
- Information technology hardware, software and maintenance.
- Hundreds of transactions for regular supplies and other program needs.

With minor exceptions, all the Library's non-collections contracts go through a single point: the Office of Contracts in the Office of Contracts and Grants Management.

As an agency in the legislative branch, the Library is not subject to all of the detailed laws that govern procurement by the Department of Defense or civilian agencies in the executive branch. We are, of course, subject to the basics – a statutory requirement for competition, the Service Contract Act, GAO bid protest jurisdiction, and the Contracts Disputes Act.

Nevertheless, to take advantage of an existing and comprehensive Government contracting framework, as a matter of policy, the Library has adopted the executive branch's Federal Acquisition Regulation (the "FAR") to guide its contracting. We adopted it because it guides agency staff through all types of contracting scenarios, provides well-tested contract clauses, and is well understood by the vendor community. We have not, however, adopted the FAR for acquisitions for the collections³ or for contracts with speakers, performers, arbitrators or similar individuals.⁴

All agencies that follow the FAR, the Library included, are able to deviate from the FAR when circumstances warrant. The FAR itself provides specific instructions on justifying and documenting such deviations. In the Library, for example, while we regularly follow the FAR for contracts funded with gift funds, if FAR processes would frustrate the terms of a donor's gift, we will take a deviation and document it.

When the Contracts Office handles a procurement, they: assess the requirement; determine a contracting approach (full and open competition or not, new contract or order against a GSA contract or other existing vehicle, etc.); develop a solicitation and independent cost estimate; solicit offers through the *FedBizOpps* website, GSA Advantage or other appropriate channel; review offers; negotiate where appropriate; and execute a contract document. They work with the program office throughout the planning and source selection process and through the contract administration phase.

³ There is no advantage to using FAR procedures, for example, with the overseas vendors from whom we acquire foreign materials, or in producing sole source documentation to buy directly from publishers or owners of manuscripts.

⁴ Contracts with individuals are handled under a separate Library regulation in accordance with 41 U.S.C. §6101, not under the FAR.

A Library-Wide Task

The Library's acquisitions function is dependent upon a skilled contracting workforce, effective organizational leadership, trained contracting representatives, cooperation among internal organizations, and sound acquisition planning. To process our contracts efficiently and properly we need an Office of Contracts staff that is adequate in number, properly trained, and that has the policies and tools needed to do the job.

However, our requirements for a smooth contracts operation go beyond the Office of Contracts. Staff in our program offices need to have a good understanding of Government contracting principles and procedures so that they can clearly define requirements, review proposals, and monitor contractor performance. The Chief Financial Officer provides key financial and technology assistance and the General Counsel reviews contracts for legal sufficiency. All of these organizational units must be in regular communication with each other on contracts matters. They must work together – both on a macro level, developing annual contracting plans for the Library, and on a micro level, on teams for individual procurements.

The Library-wide nature of contracting operations means that the responsibility ultimately falls to senior Library management to ensure that units are working together in this area.

Current Status

Mr. Chairman, the Library does not now have, nor has it had in recent years, an operation across the agency that processes contracts in a timely and efficient manner to meet program needs. I believe we have, however, established a senior management focus and series of actions over the past two years that will, with sustained attention, address the problems we have had and result in a stable and efficient contracts operation.

It is important to note that the issues we are dealing with are fundamentally management-related. They have not involved fraud or abuse in contracts processing or execution. The management issues are, however, broad and substantial.

Our Work Over the Past 24 Months

When I was appointed Library Chief of Staff in June 2010, I knew that our contracts operations required immediate focus. Ms. Suddreth was appointed Chief of Support Operations at the same time and she shared this view. We gave this area joint and urgent focus. We also realized that this was not simply a task limited to the Office of Contracts, but one that also required greater understanding across the Library on contracts formulation, award and execution. In response to a change in leadership in the the Contracts Office in the final months of Fiscal Year 2010, we assembled a team of

Library senior professionals to oversee the successful execution of the procurement cycle. The Library's General Counsel and Chief Financial Officer were brought in to this effort from the start and remain very involved.

The situation we faced in June 2010 exemplified a challenge we continue to face: with 90 days left in the fiscal year, the first priority had to be to process the work that needed to be done before the fiscal year ended. Any long-term changes in the contracts operation needed to be considered while keeping the work flowing; it was not an option to shut down operations and regroup.

Since that time, the following are the principal actions we have taken to address contracting operations issues:

– *Office of Contracts Staffing*

Assessment of staffing needs, and recruitment of qualified Contracts Office staff, were prerequisites to achieving long-term stability of contracts operations.

Between January 2011 and May of this year we hired 19 new staff members to work in the Contracts Office. We now have 33 staff in the Office of Contracts (compared with 19 as of January 2011). Twenty of these are contract specialists, including two additional GS-14 supervisors. We have increased the emphasis on performance management and individual development plans, and identified resources for investing in training. The work of the contracting staff is managed by four supervisory contracting officers⁵.

The Inspector General noted in a January 2012 report comparing Library contracts staffing levels to six other agencies that the Office of Contracts staffing levels “are generally on par with those of other agencies. In all of the statistical measures we used to evaluate those levels, the Library came in solidly in the middle or generally in a better circumstance than the other agencies in our review.”⁶

– *Certification of Contracts Specialists*

The executive branch has a three-level certification program for contracting officers and specialists known as Federal Acquisition Certification – Contracts or “FAC-C.” The levels require progressively more experience, education and training in general Government contracting rules and negotiation skills. FAC-C also requires individuals to earn “continuous learning points” in specialty areas of contracting – such as IT contracting, service contracting, performance-based statements of work, greening, and

⁵ Operating under warrants that define the scope of their authority, contracting officers have the legal authority to obligate the United States to contracts. Contracting specialists perform many of the steps in the procurement process, but do not actually negotiate or sign contracts.

⁶ Office of the Inspector General, “Office of Contracts and Grants Management: Comparative Analysis of the Office of Contracts’ Workload and Staffing Levels”, Special Project Report No. 2011-SP-105. January 2012, p. 11.

other initiatives. More complex procurements are assigned to individuals with higher level certifications.

In Fiscal Year 2011 we began to require that our contracting staff obtain FAC-C certification. To date, our contract specialists have completed approximately 1200 hours of training. We have also been looking for FAC-C certification in our new hires; three of our newest supervisory contracting officers are Level III-certified, four are Level II, and seven are Level I.

– Contracting Officer’s Representative Training

Just as our contracts staff are being given updated training, we are training the program office staff in the service units who serve as contracting officer’s representatives or “CORs.” These individuals work with our contracting officers to develop statements of work and independent Government cost estimates, and then sit on panels to evaluate vendor proposals. Once a contract has been awarded, they represent the contracting officer in day-to-day dealings with the vendor: answering questions, reviewing and accepting deliverables, keeping the work on schedule, letting the contracting officer know about any problems, and – most importantly – approving invoices for payment.

Last fiscal year, we began to implement the Office of Federal Procurement Policy’s new training curriculum for certification of Level I and Level II CORs. We began the “FAC-COR” training in the second quarter of this fiscal year. To date 224 individuals have been trained, and the training continues.

We have also worked with the service units to explain the roles and responsibilities of CORs and to confirm the proper assignment of this function in their organizations. This led to a reduction of such designations from 700 to 504 individuals. These staff members will be tracked for completion of training and certification.

– Increasing Competition

According to the FAR, executive agencies must have a competition advocate who is responsible for promoting full and open competition in the acquisition of commercial items and challenging barriers to competition. A staff member in the Office of Contracts was performing that role for the Library.

Instead, we felt that we could better ensure full and open competition for Library contracts if the competition advocate role were performed outside the Office of Contracts itself and so we developed a plan to transition the competition advocate role to the Office of the General Counsel.

As of July 1, the OGC has begun reviewing solicitations for requirements over \$150,000⁷ – to be sure that the specifications are not biased toward a particular vendor’s

⁷ This review threshold aligns with the “simplified acquisition threshold” as defined in FAR 2.101.

products or services, and that the procurement approach (going open market, through GSA, riding another agency's contract, etc.) is viable.

As the competition advocate, the OGC will also be reviewing sole source justifications for contracts over \$25,000⁸, brand name justifications, and justifications for contracting with individuals. We believe bringing the General Counsel into the front end of the procurement process will help ensure that contracts actions are on the right path. To help program offices and contracting specialists prepare better justifications in the circumstances in which contracting without competition is allowed, the OGC is adding material to its website, developing new forms, and will be offering training sessions in August.

– Procurement Planning

We clearly recognize that agency-level planning is essential to managing and executing the proper flow of contracts work throughout each fiscal year. The Library integrated procurement planning into its Fiscal Year 2012 planning and budgeting framework.

Over the past 18 months, we have been developing a new budget system for the Library and we made a procurement planning component one of the requirements for the new system. The full implementation of the budget system will take place beginning October 1, 2012 (fiscal 2013), and the spending plans that service units produce within the budget system will provide the source data for a system-generated, Library-wide, procurement plan to serve as the basis for the Office of Contracts work planning. The budget system will not only force reconciliation of spending and procurement plans in ways that were never before possible, but also enable real-time tracking of execution against both spending and procurement plans so that service units, the Library's Budget Office, and the Office of Contracts will be looking at the same status information at any given time.

We believe that these connected, reconciled, and trackable plans will result in significant improvement in the Library's ability to plan and execute budgets and related contracts actions.

The March 2012 Inspector General Report

During the time much of the activity I have outlined above was underway, the Inspector General was concurrently developing the report he issued in March. Both Ms. Suddreth and I were briefed by the IG while his work was underway and the preliminary findings of the consultant were shared with us.

⁸ The \$25,000 review threshold was chosen because it aligns with the competition threshold in 41 U.S.C. §6101(b)(2)(A).

I believe the report properly frames the challenge we have faced and I fully agree with its conclusion that senior Library management should concentrate on “forming a sustainable, long-term solution to the problem.”⁹ I believe we have done that over the past 24 months. The report cites the ten “Root Causes Creating Procurement Function Weaknesses.”¹⁰ Our work over this period shows our approach recognizes and is aimed at those root causes.

We have responded to the report with a list of actions, many already taken, that correspond to its 51 recommendations. To date, we believe we have implemented or nearly completed implementing 26 of these recommendations.

The House Appropriations Committee Directive

On June 1, 2012, the House Committee on Appropriations issued H. Rept. 112-511. This report included language directing the Librarian to either hire, contract for, or assign an in-house top level manager, reporting directly to the Chief of Staff, charged with addressing, providing solutions to, and bringing to closure all concerns in the Inspector General’s report.¹¹

In response to this language, I have detailed Mr. Edward Jablonski to the Office of Contracts. This is his fourth week in this position. He is reporting directly to me.

Mr. Jablonski is the Associate Director for Finance and Administration in the Congressional Research Service. He has extensive experience in contracts work, both in the Library and in his post as Comptroller of the Naval Sea Systems Command prior to coming to CRS.

Current Priorities

Mr. Chairman, the work we started in June 2010 will continue as a priority for me and for our senior management team. Our first priority is twofold:

- to process the contracts work that remains for the current fiscal year; and
- in doing this, avoid the processing mistakes and errors that were cited in the Inspector General’s report.

We will continue our programs of contract specialist and COR training. It is also important that we retain the staff that we have hired over the past year. We want to provide a work environment for them that allows for a predictable workflow, provides

⁹ Office of the Inspector General, “Library-Wide Acquisition Function: Ongoing Weaknesses in the Acquisition Function Require a Senior Management Solution,” Special Project Report No. 2011-SP-106. March 2012, p. 5.

¹⁰ Ibid. Appendix B, p. 7.

¹¹ Committee on Appropriations, U.S. House of Representatives, House Report 112-511, p. 16.

them with the tools and resources they need, and emphasizes open communication within the Office of Contracts and between the Office and the Library's other units.

We have also begun a concerted effort to define the functional requirements needed by the Office of Contracts in the Library's financial management system (Momentum). We will make sure that Momentum is better configured to aid the work of our contract officers and specialists, and that contracts staff are adequately trained to take advantage of these tools.

When we are confident that this year's work can be fully executed, we will continue our efforts to improve workflow, update our policies and guidance, improve quality assurance, and identify technology requirements for our contracts work. Last fall, we brought in an outside team to help us by assessing each of these areas. This work will help us move forward. We will also verify the proper implementation of the IG's recommendations.

Mr. Chairman, I can assure the Committee that contracts administration has the attention and focus of the Library's senior management. I can speak for myself and the Librarian in stating that we will sustain that attention and focus. We know that effective contracts administration is essential to the proper and efficient provision of the Library's services to the Congress and Nation. We also know that we need to address these issues fully and enduringly. We will continue to report our progress to the Committee.