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UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

GENERAL GOVERNMENT  
DIVISION

B-202816

NCJRS

APRIL 17, 1981

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The Honorable Max Baucus  
United States Senate

ACQUISITIONS

Dear Senator Baucus:

Subject: Use of Consultants By the Department  
of Justice (GGD-81-55)

In accordance with your April 29, 1980, request we reviewed the Department of Justice's use of consultants. Our review included the extent to which the Department used consultants, purposes for which consultants were used, possible conflicts of interest, and the procurement practices employed to award such contracts.

Overall, the Department used outside consultants sparingly, with the exception of two of its agencies. These agencies were the former Law Enforcement Assistance Administration (LEAA) and Justice's litigative divisions. <sup>1/</sup> The Department spent \$18.2 million in fiscal year 1980 for consulting services, which represented less than 1 percent of its total 1980 budget. Of the total spent for consulting services in fiscal year 1980, LEAA and the litigative divisions spent 91 and 8 percent, respectively. LEAA consulting contracts were awarded primarily to administer programs and provide technical assistance to State and local law enforcement agencies. The litigative divisions' consulting service contracts were generally for studies and testimony at Federal trials on behalf of the Government. Both agencies generally based their justifications for using consultants on the lack of in-house expertise.

We believe that the procurement practices used in awarding consulting service contracts did not always insure that the costs were being minimized. This was especially true of the litigative divisions and LEAA. The litigative divisions awarded a majority of their contracts without competition. Although LEAA awarded its

<sup>1/</sup>Litigative Divisions include the Civil Division, Criminal Division, Antitrust Division, Tax Division, U.S. Attorneys, and various other divisions and components.

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contracts competitively, it reimbursed the majority of its contractors on a cost-plus-fixed-fee basis. Also, the type of contracts awarded by the Department did not lend themselves to conflict of interest situations. There was no evidence in the contract files to demonstrate that any of the contractors could benefit from future Government ventures. In our opinion the nature of the contracts and the contractors involved did not create the appearance of any conflict of interest.

To improve its management of consulting service contracts the Department has created a preaward contract review committee to monitor contracting practices. We believe the action being taken is a step in the right direction and should have a positive effect on the Department's future procurements.

#### OBJECTIVES, SCOPE, AND METHODOLOGY

The objectives of our assessment were to determine the extent to which the Department of Justice used consultants, the purposes for which the consultants were used, possible conflicts of interest, and the procurement practices used to obtain such services. Due to the lack of a comprehensive list of consulting service contracts within the Department, we had to identify and construct such a list. To accomplish this we used the definition of a consulting service contract contained in Office of Management and Budget (OMB) Circular A-120 and applied this definition to all contracts active as of September 30, 1980. After identifying and compiling a list of all contracts within the Department, we obtained agreement from all but one of the contracting units that the contracts identified were consulting service contracts.

The contracting unit in question is the Property Management and Procurement Staff that procured the contracts identified as consulting service contracts for the litigative divisions. The contracts in question were awarded to individuals to prepare various studies and to be available to testify at Federal trials if necessary. Although officials from this unit agree that there are elements in the work statements of these contracts which may support the inference that consulting services were procured according to OMB Circular A-120, they contend that the ultimate purpose of the contracts was to provide testimony. Therefore, the unit maintains that their contracts are not consulting service contracts under the terms of OMB Circular A-120. If these contracts were solely for expert witness testimony at Federal trials, then we would entirely agree with the unit's position. However, because such services were not segregated from the

expert testimony, we classified these contracts as consulting service contracts.

We interviewed procurement officials, reviewed policies and procedures for obtaining consulting services, and reviewed each contract file identified as a consulting contract. Most of our work was at LEAA and the litigative divisions because 90 percent of the active consulting service contracts were awarded by them.

#### WHAT IS A CONSULTING CONTRACT?

The Department, like other executive departments and agencies, acquires consulting services through procurement contracts, civil service appointments, and advisory committee memberships. OMB Bulletin 78-11, dated May 5, 1978, prescribed policy and guidelines for executive branch agencies on acquiring and managing consulting services. The bulletin defined consulting services as "those services of a purely advisory nature relating to the governmental functions of agency administration and management and program management." OMB Circular A-120, issued April 14, 1980, superseded the bulletin and provided more permanent guidelines. Although the definition remained the same, the circular expanded the list of examples of consulting services to assist the agencies in identifying and classifying such activities.

In three earlier GAO reports, we stated that agencies were experiencing difficulty in applying OMB's definition of consulting services. <sup>1/</sup> As discussed in these reports, the problem lies in the fact that the definition of a consulting service contract is vague and subject to interpretation. This was evident from our discussions with various contracting officials within the Department. One contracting official said he believed that Circular A-120 expanded the definition of consulting services, and another contracting official said it narrowed the definition. Such confusion has made it virtually impossible for the Department to develop a comprehensive list of consulting service contracts.

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<sup>1/</sup>"Controls Over Consulting Service Contracts at Federal Agencies Need Tightening", PSAD-80-35, March 28, 1980; "Government Earns Low Marks on Proper Use of Consultants", FPCD-80-48, June 5, 1980; and "Agencies Should Disclose Consultants' Roles in Preparing Congressionally Mandated Reports", FPCD-80-76, August 19, 1980.

CONSULTING SERVICE CONTRACTS  
USED BY THE DEPARTMENT

Overall, the Department has not used consulting service contracts extensively. As of September 30, 1980, the Department had 88 active consulting contracts totaling about \$49.3 million. These contracts were for conducting management studies, administering programs, and providing testimony at Federal trials. Of the 88 active consulting contracts, 79, or 90 percent, were in LEAA and the litigative divisions. The following chart is a breakdown of the active consulting contracts.

<u>Component</u>	<u>Number of active contracts</u>	<u>Dollar amount</u>
Law Enforcement Assistance Administration	34	\$46,454,766
Litigative divisions	45	2,493,399
Immigration and Naturalization Service	2	139,278
Bureau of Prisons	1	31,200
Federal Bureau of Investigation	3	29,500
Drug Enforcement Administration	<u>3</u>	<u>121,083</u>
Total	<u>88</u>	<u>\$49,269,226</u>

The 34 LEAA contracts were primarily to administer programs and provide technical assistance to State and local law enforcement agencies. Some examples of active consulting service contracts awarded by LEAA follow.

--A contract valued at \$1.4 million required the contractor to furnish the professional and technical personnel, clerical services, equipment, facilities, and materials

necessary to provide technical assistance to State and local courts dealing with criminal matters. In this capacity, the contractor was to assist in the development of LEAA programs.

- A contract valued at \$3.1 million was awarded to a contractor to assist in reviewing selected ongoing and recently completed research findings to assess their programmatic implications. The contractor was also required to review research conducted by other Federal agencies. On the basis of the significance of the research findings, the contractor was to recommend the most effective format in disseminating this information to target audiences and prepare dissemination materials.
- A contract valued at \$4 million required the contractor to furnish all administrative, professional, technical, and clerical services and equipment, facilities, and materials necessary to provide the required levels of activity. This activity included coordinating and conducting regional and national workshops, field testing various training programs, and evaluating the quality and impact of these activities. According to the statement of work, the objectives of the training contract fell into four general categories: administration, regional training workshops, special national workshops, and field training.
- A contract valued at \$2.4 million was awarded to assist State and local criminal justice agencies in the cost-effective transfer and implementation of the prosecutor management information system. The contractor was required to design a program for the timely delivery of technical assistance in the planning, implementation, and transfer of the system to requesting agencies. The contractor was also required to design a training program for system users.

The remaining 30 active consulting service contracts awarded by LEAA were for purposes similar to the examples cited above.

The litigative divisions had 45 active consulting service contracts valued at about \$2.5 million. Forty-four of these contracts were awarded to individuals to prepare various studies and be available to testify at Federal trials. The remaining contract, valued at \$330,367, was to recommend alternatives, where appropriate, for support services, personnel, purchasing and procurement contracts, budget and accounting operations, mail and

courier services, records management, facilities management, inventory and property management, data processing services, printing and distribution, library services, and security.

### CONTRACTING PRACTICES

The Department's contracting practices for consulting service contracts did not always insure that costs were being minimized. This was especially true of the litigative divisions and LEAA. The litigative divisions awarded the majority of their contracts on a sole-source basis. Awarding contracts constantly on a sole-source basis restricts competition, which can result in increased cost. In contrast, LEAA awarded a majority of its contracts competitively but reimbursed its contractors on a cost-plus-fixed-fee basis. Reimbursing contractors on a cost-plus-fixed-fee basis provides little incentive for contractors to minimize cost.

#### Use of sole-source contracts

Of the 88 active consulting contracts, 48 were awarded on a sole-source basis. Of the 48 sole-source contracts, 43 were awarded by the litigative divisions. The following table shows the method of contracting used by the various agencies within the Department to award consulting contracts.

	<u>Sole-</u> <u>source</u>	<u>Competitive</u> <u>bid</u>	<u>8 (a)</u> <u>(note a)</u>	<u>Total</u> <u>contracts</u>
Litigative divisions	43	2	0	45
Law Enforcement Assistance Administration	3	25	6	34
Immigration and Naturalization Service	0	2	0	2
Drug Enforcement Administration	1	1	1	3
Bureau of Prisons	1	0	0	1
Federal Bureau of Investigation	<u>0</u>	<u>3</u>	<u>0</u>	<u>3</u>
Total	<u>48</u>	<u>33</u>	<u>7</u>	<u>88</u>

a/These are minority set-asides (15 U.S.C. 644 et. seq.).

The 43 sole-source contracts entered into by the litigative divisions amounted to \$2 million, representing 82 percent of the total dollar value of the active contracts awarded by this agency. These contracts were primarily with individuals having expertise in such fields as economics, engineering, and finance. The requesting organization usually identified a particular individual and justified sole-source contracting on the basis of the individual's knowledge and expertise.

Although the litigative divisions used sole-source contracting extensively, the Department's other agencies did not. Department-wide sole-source contracting amounted to only 6 percent of the total dollar value for active consulting contracts as of September 30, 1980.

#### Use of cost-plus-fixed-fee contracts

In 37 of the 88 contracts, or 42 percent, cost-plus-fixed-fee contracts were used to procure consulting services. Of the various agencies within the Department, LEAA used this type of

contract to the greatest extent. Thirty-two of the 34 active contracts awarded by LEAA were of this type. A cost-plus-fixed-fee contract is a cost-reimbursement type of contract which provides for the payment of a fixed fee to the contractor irrespective of the costs incurred by the contractor. However, the costs cannot exceed a specified amount without a formal modification. The fee can change only when the scope of the work under contract changes or pursuant to a modification. Under this type of contract, the contractor has little incentive to reduce cost. However, LEAA officials believe these contracts did not lend themselves to any other method of contracting.

Usually this type of contract is used where dollar amounts are large, the work specifications cannot be defined exactly, and the uncertainty involved in performance is so great that neither a firm nor an incentive arrangement can be established during the life of the contract. For the contracts reviewed, the justifications for using this type of contract were standardized. The justifications generally stated that the performance of the work involved such uncertainties that the cost of contract performance could not be estimated. A typical example of a justification for use of this type of contract was "The amount of work cannot be accurately forecast to permit undertaking the work on a firm-fixed-fee basis \* \* \*."

#### Contract modifications

LEAA was the only component within the Department that used contract modifications extensively. Twenty-seven, or 79 percent, of all its active contracts had been modified for one reason or another. The total dollar value of the modifications amounted to \$18.9 million, or an 85-percent increase over the original contract price. Originally, the 27 contracts were valued at \$22.3 million, but after modifications these contracts amounted to \$41.2 million. The following are the reasons provided by LEAA for these contracts being modified.



	Number of contracts involved (note a)	Number of modifications (note a)
Change in work scope	15	25
Extend period of performance	19	46
Unanticipated cost	17	36
Other	23	62

a/Contracts or modifications may relate to more than one category.

A CONTRACT REVIEW COMMITTEE  
HAS BEEN ESTABLISHED BY THE  
DEPARTMENT OF JUSTICE

In response to a memorandum by the Director of OMB requiring the adoption of specific measures to control abuses in using consulting services, the Attorney General established a departmental contract review committee on January 16, 1981. The committee is to conduct final preaward reviews of all contracts, including consultant contracts, in the following categories: (1) all formal contracts regardless of contract type in excess of \$100,000, (2) all contract modifications or amendments to existing formal contracts which cause the contract cost to exceed \$100,000, and (3) all noncompetitive sole-source contracts, modifications, or amendments to contracts which exceed \$50,000.

We believe the action being taken by the Justice Department is a step in the right direction. We further believe that it will have a positive impact on correcting the problems discussed in this report.

We hope this report will assist you in your continuing efforts to assess the use of consultants by the Federal Government. As arranged with your staff, unless the contents of this report are released earlier, we plan no further distribution until 30 days from the date of this report.

Sincerely yours,

*W. J. Anderson*

William J. Anderson  
Director