FLRA INSPECTOR GENERAL INTERNAL REVIEW OF FLRA COURT REPORTING PROCUREMENT

I. REFERENCES

Federal Acquisition Regulation 16.500 -Indefinite-Delivery Contracts; Federal Acquisition Regulation 16.201 - Fixed-Price Contracts;

FederalFederal AcquisitionFederal Acquisition Regulation 13.303, Federal Acqu.

Federal Acquisition Regulation 19.501, Set-Asides for Small Businesses;

U.S.U.S. Department of Labor BurU.S. Department of Labor Bureau ofU.S. De Outlook Handbook; Court Reporters and

FLRA Instruction 4410.1B, Procurement Policy and Procedures

II. METHODOLOGY

ThisThis interThis internal rThis internal review of FLRA procurement of transcriptiontranscription services was conducted pursuant to govertr auditingauditing standards. Interviews were conducted with the General Counsel, DeputyCounsel, Deputy Counsels, OfficeCounsel, Deputy Counsels, Of DiDirectors, Directors, Regional Office Managers, Chief, Administrative I Judge, and the Solicitor.

III. BACKGROUND

As part of FLRA's statutory mission, the Office of the General CoCouCounsel, Counsel, Office of Administrative Law Judges, the Authori FederalFederal Services Impasse Panel, and the Office ofFederal Services Impa involved involved in court litigation, which involved in court litigat services.services. Since its inception, the FLRA has outsservices. Si servicesservices required by the Headquarters and Regionalservices require has never used its own employees for this requirement.

IV. FACTS

BasedBased upon the availabilityBased upon the availability of FY 2001 funds, forfor Proposal(RFP), which included a detailedfor Proposal(RFP), which included a detailedfor Proposal(RFP), which included rates and transcription services.court reporting and transcription and transcription services.court reporting transcription and transcription services.court reporting transcription services.court reporting and transcription services.court reporting transcription services.court report r

TheThe Inspector General reviewThe Inspector General review of this FY 2001Th thatthat it setthat it set forth the requirements forthat it set forth the reand transcription service with adequate specificity and detail.

The statement of work pertained to both court reporting and transcriptiontranscription services. It setranscription services. It set contractor for on-site cancellation, late cancellation, and additionaladditional services. The statemeadditional services. The state requiredrequired formatrequired format for transcripts and exhibits, author ofof duplicate transcriptof duplicate transcripts, of duplicate transcripts requirements, requirements, stipulated paymrequirements, stipulated p confidentiality standards.

InIn response to the solicitation, and based upon stIn response to th criteria, criteria, contracts werecriteria, contracts were awarded to four of reportingreporting and transcriptions services. The following selectirepo were based, in part, on geographical time zones:

- NEAL R. GROSS & CO. INC. (Washington, DC). Washington Regional Office Boston Regional Office
- JACKSON & ASSOCIATES (Santa Rosa, CA). Denver Regional Office
- ON THE RECORD REPORTING (Austin, TX) Atlanta Regional Office Dallas Regional Office Chicago Regional Office

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□□ VARS (Sacramento, CA) San Francisco Regional Office

TowardToward the end of 2003, the FLRAToward the end of 2003, the FLRA Contract courtcourt reportingcourt reporting contract forcourt reporting contract for managementmanagement that the current contract would expmanagement that 2003.2003. 2003. FLRA management did not approve the contract by the end20 thethe year and, the year and, instead, extended the existing 2003 contract daysdays (expiration on Marchdays (expiration on March 30, days (expira continued to provide services. TheThe Inspector GeneralThe Inspector General review ofThe Inspector General Statement ofStatement of Work identifiedStatement of Work identified a few addressedaddressed by the FLRA 2004 Statement of Work submittedaddressed management for approval. These include:

<u>ContractContract Administration</u> (should address (should address what happens inaccurateinaccurate preparation of transcinaccurate preparation of t reporter to show up or show up late for a hearing.)

<u>MethodMethod and RequiremeMethod and RequirementMethod and Requirements f</u> reductionsreductions if contrreductions if contracreductions if contr improperly prepare transcripts, and cancellation of cases etc.).

<u>CourtCourt Reporting Certification & Requirements</u> The previous FLRA 2001-20032001-2003 Master Requirement2001-2003 Master Requirement Contract f alsoalso addressed liquidated damage charges againstalso addressed liquidated latelate transcripts, failure oflate transcripts, failure of the reporter to come at all, andcome at all, and the methodscome at all, and the methods of ItIt also addressed confidentialityIt also addressed confidentiality of info forfor travel, lodgingfor travel, lodging and meal costsfor travel, lodging a 4848 con48 conti48 contiguous states of the U.S.) The FLRA allocated \$50, perper year to each of the four contractors selectedper year to each of the

2003 contract. The actual expenses for court reporting 2003 contract. The than the total yearly allocation of \$2000.00.

At the end of FY 2003, the tree option year court reporting contractcontract with Neal Gross & Company, OTR, Incorcontract with N IncorporatedIncorporated and JackIncorporated and Jackson & AIncorporated OfficerOfficer created a draft statement of worOfficer created a draft sta thatthat the GSA Multiple Award ScheduleAward Schedule was the most viable sc thethe contract. Although a Although a new statement of work wasAlthough a ne thethe end of the contract, FLRAthe end of the contract, FLRA mana 9090 days which would expire on March 31,2004. At90 days which would expire dayday extension, FLRA management decided to useday extension, FLRA managemer ScheduleSchedule for contracting the court reporting services, bSchedule f waswas insufficient time left to uswas insufficient time left to us process.process. Since several FLRA hearings requiring court reporproces servicesservices were scheduled for early April. services were scheduled decideddecided to issue blanket purchase agdecided to issue blanket remaining remaining months remaining months of FY 2004. FLRA used the previous contractors, contractors, Neal Groscontractors, Neal Gross & contractors, RegRegionalRegional ORegional Offices, OTR, Incorporated for the Atlanta, ChicagoChicago RegionalChicago Regional OfficesChicago Regional Offices and Jathe Denver and San Francisco Regional Offices.

V. Costs

BasedBased upon maximumBased upon maximum workloadBased upon maximum workload\$200,000\$200,000 per year for court\$200,000 per year for court reporting during the expenditure for actual requirements was substantially less.

	Expended	Budget
FY 2000	\$31,981.65	\$45,798.35
FY 2001	\$88,633.68	\$109,386.95
FY 2002	\$88,682.23	\$106,337.50
FY 2003	\$96,144.94	\$125,000.00
*OGC *FSIP *ALJ & AUTH	\$46,691.62 \$565.80 \$0.00	\$75,000.00 \$565.80 \$0.00
FY 2004 (September 30,2004)	\$75 , 997.93	\$75,565.80

TheThe total amount The total amount sThe total amount spent duris \$37,581.15.\$37,581.15. The amount spen\$37,581.15. The amount spent duris \$38,416.78\$38,416.78 even though \$85,000.00 was allocated for rem\$38,416.78 the fiscal year.

DuringDuring FY 2004, the FLRA Regional Offices required the fDuring FY 20 amount of court reporting.

7 times	
6 times	
6 times	
4 times	
8 times	
4 times	
10 times	
11 time	1 time
	6 times 4 times 8 times 4 times 10 times

VI. Procurement Options

GSA Multiple Award Schedule FY-2004

This investigation affirmed that in early March 2004, the ContractingContracting Officer recoContracting Officer recommContracting multiple-awardmultiple-award contract pursuantmultiple-award contract pursu ScheduleSchedule (SoliSchedule (SolicSchedule (Solicitation Number.7FCM-N contractcontract wouldcontract would have pcontract would have provided transcriptiontranscription services fortranscription services for thetransc implementedimplemented cancellation fees and additioimplemented cancellation aapproapprovedapproved overtime and weekend work. By the time FLRA manage acceptedaccepted the FLRAaccepted the FLRA Contracting Officer'ss recommenda lead-timelead-time to satisfy competitionlead-time to satisfy competition have alternativealternative was necessary to ensurealternative was necessary to ensurealternative was necessary to ensurealternative was necessary to ensure the satisfy competition have first part of April 2004 would have court reporters.

Blanket Purchase Agreement FY-2004

OnOn April 2, 2004, FLRA Director of AdministrOn April 2, 2004, F Division, Division, directed thDivision, directed the FDivision, directed BlanketBlanket Purchase Agreement (BPA) forBlanket Purchase Agreement (BPA) remaining six months of FY-2004.

TheThe BThe BPA authorized FLRA Regional Office managers to place ordThe E withwith thewith the vendors listed on that document: however, because Offi ManagersManagers procurement authority is limManagers procurement author purchasing purchasing threshold, any order exceedingpurchasing threshold, any bebe submitted be submitted to the Director, Administrative Servicesbe submit forwardedforwarded it to the FLRA Contractforwarded it to the FLRA Contractforwarded it to the FLRA Contract a form to the form to the Office of the General Counsel who thena form to through the Administrative Services Division. through the Administrative were required to maintain monthlywere required to maintai whichwhich were submitted to the Director, Administrativehich were submitted to the Director.

The BPAs set forth thThe BPAs set forth the FLThe BPAs se requirements requirements in a fashion similar torequirements in a fashion sim inin the previous in the previous coin the previous court reporting of specifications for transcripts, exhibits, fees, and timeliness. However, However, BPAs do not citeHowever, BPAs do not cite appropHoweve 16.702(c)).

TheThe BPAs wereThe BPAs were merelyThe BPAs were merely written instruments FLRAFLRA and the vendors, whichFLRA and the vendors, which contemplated the serviceservice or product, if the vendor acceptservice or product, if the purchase order is not a contract FAR 16.702(a)).

BPAsBPAs are not contracts but BPAs are not contracts but areBPAs are a enforceable.enforceable. Each time a courtenforceable. Each time a court a hashas to send outhas to send out the order and the companieshas to send out t SinceSince BPAs Since BPAs areSince BPAs are not contracts, the comparesponsibleresponsible for performing all of the stated duresponsible agreementagreement of be held responsible for not showing up to the hearing onon time. BPAs do not prevent the companieson time. BPAs do not prevent havehave thehave the obligation to standardizehave the obligation to standard to court reporting services list general specifications.

TheThe use of BPAs for court reporting by FLRA Regional Offices began inin April,2004. Although thein April,2004. Although the FLRA Officein April,2 DirectorsDirectors statedDirectors stated thatDirectors stated that initial toto obtain service under the BPAto obtain service under the BPA, significantsignificant problems other than onesignificant problems other that AtlantaAtlanta Regional Office. This occurred while theAtlanta Regional Office OfficerOfficer was on leave and Officer was on leave and did not reOfficer OfficeOffice requestOffice request for court reporting services onOffice req appearedappeared that the blanketappeared that the blanket purchase process w it required much more paperwork than the previous contracts.

BPAsBPAs can onBPAs can only BPAs can only be processed by the FLRA Cont PurchasePurchase Agent if theyPurchase Agent if they exceed \$2,500.00. Purch usedused have \$10,000.00 onused have \$10,000.00 on each requisition to comm courtcourt reporting services. If a dispute issue arises usincourt reporting therethere isthere is no enforceable agreement. While contracts require contractorcontractor to accept relatedcontractor to accept related taskcont toto accept BPAs and can even increase their rates for eacto accept BPA Regional Office BPA submission for court reporting services.

TheThe FLRA Office of General Counsel management anGeneral Counsel managem strongstrong preference for reinstating a formal contracstrong preference reportingreporting and transcription servicesreporting and transcription monitoredmonitored better, service ismonitored better, service is more respo controlled.

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The FLRA Contracting Officer and Purchase Agent stated that FLRA" ss reliances reliance on BPAs yields too much independence to vendors wh areare not obligatedare not obligated toare not obligated to accept in enforceable contract, which provides specific duties for timeliness, timeliness, BPAs "start fromstart from scratch" each time a vendo uponupon to accept or rejectupon to accept or reject an assignment. Initiall daysdays weredays were days were involved in the processing of BPAs because ordersorders had to be approved before the purcorders had to be appropriate processed.processed. As previously stated, an appropriate process that the form had to be the BPA process so that the OfficeOffice of the General Counsel as well as the Office of the General Services Division.

CurCurrently, Currently, Currently, the FLRA Office of General Counsel AdAdministrativeAdministrative Law Judges are the FLRA components the regularlyregularly using court reporterregularly using court reporters. OfficeOffice of the Solicitor only use them oOffice of the Solicitor only thethe FLRAthe FLRA Authority is involved in a circuit court issue, reportin servicesservices are provided by the court and theservices are provided by t doesdoes not have the responsibilitydoes not have the responsibility todoes r IfIf the SolicIf the SoliciIf the Solicitor gets involved in depositions ar aa court reporter, he does so through the Adminia court reporter, he does Division.

VII. In-House Alternative

BecauseBecause court reportingBecause court reporting and trBecause cour "inherently governmentalinherently governmental function", there is, there is FederalFederal agency deploy its own employeesFederal agency deploy its own e President'ss Mans Management Agenda states a preference for outsourcing such commercial activities.

InIn August 2004, FLRA InspectorIn August 2004, FLRA Inspector GeneralIn Augu ReportingReporting Association (NCRA) to evaluateReporting Association (NCRA ofof training incumbent employees to of training incumbent employees to overalloverall court reporting and transcription funcoverall court rep variousvarious NCRA programs are approvedvarious NCRA programs are approved forfor court reporters. The prices range from \$8,000 to \$20,000 per traineetrainee.trainee. The entire training process requires approved months. BasBasedBased upon preliminary budget estimates it was obvious that trainingtraining eight regional employees and two headtraining eight region was not a feasible alternative to outsourcing court reporting, and and is not a cost productive and is not a cost productive op prohibitiveprohibitive prohibitive dirprohibitive direct labor costs, it divertdivert these employees frodivert these employees from divert these regular duties.

Discussions with FLRA paralegal and legal technicians revealed thatthat mthat mothat most would be interested in training to assume such theythey would only do so if they would only do so if their gradthey wou FLRAFLRA Regional Office Directors stated that performinFLRA Regional Offic in-housein-house would cause the appearin-house would cause the appearan shiftshift shift tooshift too much additional work to other administrative andand unacceptably increase traveland unacceptably increase travel costsand RegionalRegional OffRegional OfficeRegional Office locations. Most of managersmanagers were not interested in pursuing the new dumanagers were n reporting.

AA questionnaire sent to theA questionnaire sent to the Regional Office Mang revealedrevealed that the mrevealed that the marevealed that the majorit currentcurrent BPcurrent BPAcurrent BPA method because it required much mo currentcurrent BPA Regional Office method for obtaining courcurrent BPA Re servicesservices requires the FLRA Regional services requires the FLRA Regi authorizationauthorization form which requires the Regionalauthorization form subsubmitsubmit the form to the FLRA Office of General Counsel asubmit the AdministrativeAdministrative Services Administrative Services DiviAdmin \$2,500.00 or more and submit additional paperwork to the vendor.

VIII CURRENT ACTION

OnOn September 27, 2004, the FLRA InspectorOn September 27, 2004, the FLRA Ins FLRA management had made an interagency agreement with the DepartmentDepartment of Treasury FedSource to contrDepartment of Treas servicesservices for the FLRA. Management planned for thisservices for the F onon October 1, 2001 after the Blankeon October 1, 2001 after the Blanketor SeptemberSeptember 30, 2004. However, theSeptember 30, 2004. However, DepartmentDepartment of Treasury FedSourcDepartment of Treasury FedSource FLRAFLRA because of the high priceFLRA because of the high price submitted FLRAFLRA because of the high priceFLRA because of the high price submitted ALR contract not more than \$100,000.00. FLRA management has contract not more thethe use of the BPA until December 31, 2004 because anthe use of the BPA contractcontract had not been provided. contract had not been provided. Th costcost negotiatiocost negotiation bcost negotiation between the Department thethe Esquire Deposthe Esquire Deposithe Esquire Deposition Service cont thatthat if the contract price can not bethat if the contract price can not b level, level, they would continue usinglevel, they would continue using the even these services through GSA.

VIII. CONCLUSION

Mission Requirement

CourtCourt repoCourt reportinCourt reporting and transcription services are orientedoriented servicesoriented services, whichoriented services, which AdministAdministrativeAdministrative LAdministrative Law Judges and the Of CourtCourt Court reCourt reporting services are on occasion, required by th ServicesServices Impasse Panel, the Authority,Services Impasse Panel, to SSolicitor.Solicitor. Because this requirement is essential and cannSoli conductedconducted byconducted by conducted by FLRA employees, it is i contract out for these services.

In-House

Although most FLRA paralegal or legal assistants considered courtcourt reporticourt reporting court reporting training would be use traveltravel requirements, travel requirements, andtravel requirements, and t courtcourt reporter are negativecourt reporter are negative recourt considerationconsideration of thiconsideration of thisconsideration of time/coststime/costs supports the contracting of these services fortime/cost WhileWhile court reporting and transcription services aWhile court repo agencyagency services, such commercial agency services, such commercial governmental function, and should be properly outsourced.

Outsourcing: Blanket Purchase Agreement

TheThe use of The use of BThe use of BPAs instead of contracts for of transcriptiontranscription services was a viable alternative at thetranscrip 20042004 and is curr2004 and is current2004 and is currently necessary throughthrough the Department of the Trthrough the Department of the becausebecause of its extebecause of its extenbecause of its extensive providedprovided an essential service while FLRA managementprovided an essent implementimplement a more permanent solution. FLRA management's decision to contract out for court reporting servicescontract out for court report TreasuryTreasury FedSourceTreasury FedSource has resulted in taking moreTrea costing more money than feasible.

WhilWhileWhile the BPWhile the BPA system has worked satisfactorily for the processprocess is not in the best interest for theprocess is not in t governmentgovernment for servicesgovernment for services (better for materia doesdoes not promote competition; it creadoes not promote competition; it cancan cause risks such ascan cause risks such as untimely deliverycan cause anan increases in costs. An an increases in costs. An increase ian incr services actually occurred by the Neal Gross, Inc. contractor.

Outsourcing: FedSource

Federal Acquisition Regulation 16.500-Indefinite-Delivery Contracts; Federal Acquisition Regulation 16.201- Fixed-Price Contracts;Contracts; and FederalContracts; and Federal Acquisition Regulation SmallSmall Businesses prescribeSmall Businesses prescribe authority andSmall FLRA'ss requirements requirement s requirement for court reporting and trans PriorPrior to the release of this report, FLRA manPrior to the release of thethe the procthe procedure for outsourcing court reporting and transcr services.services. services. In orderservices. In order to eliminate the use procurementprocurement (recommended procurement (recommended byprocureme ServicesServices DServices DivisioServices Division), and contract for executedexecuted anexecuted an inter-agency agreement with the FedSource, an thethe Department of Treasury. The Depthe Department of Treasury. The Dep willwill perform all contract will perform all contract adminiwill per possibpossiblepossible to evaluate cost benefits of this process at this since the contract is currently under negotiation for costs.

TheThe Department of Treasury'ss FedSource doess FedSource does have a proven reliablereliable inter-agency support and outsreliable inter-agency suppor andand transcriptionand transcription servicand transcription services. Su thethe initialthe initial recommendation contemplated bythe initial recommend eliminateeliminate the use of BPAseliminate the use of BPAs and contract out waswas was not an inappropriate decision for management to enter into an agreementagreement with aagreement with anotheagreement with another Fede proprocessing the contract with GSA within house through GSA wo havehave probably involved much less time and mohave probably invo submissions.submissions. The task order initially subsubmissions. The task ofof Treasury FedSource wasof Treasury FedSource was the statement of workof byby the FLRA Contractby the FLRA Contracting Oby the FLRA Contracting Off OfficeOffice of General Counsel foOffice of General Counsel forOffice of NorNor was this statement of work provided toNor was this statement of work CounselCounsel before it was submitted to the DepartmCounsel before it FedSource on September 9, 2004.

Since the Office of General Counsel was not included in the creationcreation of the statementcreation of the statement ofcreation of the usefuluseful input from the primaryuseful input from the primary useruse SuchSuch initial input could have improved tSuch initial input could have beforebefore it was released to tbefore it was released to thebefore it contracontractor, contractor, the Esquire Deposition Service. Esquire Dep ServiceService would notService would not submitService would not submit its questionsquestions werequestions were addressed. Thequestions were addressed thethe Department of Treasury FedSource, withthe Department of Treasury FedS needneed of more explicit need of more explicit inforneed of more explic reportingreporting services before theyreporting services before they could and the cost for providing court reporting services.

TheThe DepartmentThe Department of Treasury FedSource contacted the FLRA Direc AdministrativeAdministrative Services DivisAdministrative Services Divi information.information. The FLRA Director, Administratiinformation. The H directeddirected the FLRAdirected the FLRA Contractingdirected the FLRA Cont thethe FLRA was contracting out the FLRA's court reporting services throughthrough the Department of Treasury FedSource)through the Department of thethe FedSource's contractor'ss questions. The FLRA Contractings questions. T statedstated hstated he stated he could not provide this information without thethe FLRA'ss Office ofs Office of General Counsel and the FLRA Regional Of which he did.

On September 28,2004, the FLRA Contracting Officer e-mailed the FLRAFLRA Office of the General Counsel requesting tFLRA Office of information.information. This information was provided to information. This OfficerOfficer and then to the FLRA Director, AdmiOfficer and then to DivisionDivision on and forwarded toDivision on and forwarded to the Departm TheThe Department of TreasuryThe Department of Treasury FedSource contractor, ServiceService issued their proposService issued their proposaService issue becausebecause its costs were excessive.because its costs were excessive. The negotiated negotiated by the Department of Treasury FedSource because onegot costs.

ThisThis investigation revealed that the FLRA anticipated thThis investig reportingreporting services requirementreporting services requirement to be statesstates that acquisitions not exceeding \$100,000.00 shstates that acc asideaside for small business concerns. FAR 19.502 (b) provides that acquisitions acquisitions exceeding \$10acquisitions exceeding \$100.0acquisi businessbusiness concerns whenbusiness concerns whenevebusiness concerns wh twotwo or more small business concerns ctwo or more small business acquisitions acquisitions practice or hiacquisitions practice or history determiningdetermining the determining the likdetermining the likelihood FedSourceFedSource awards this FLRA statement FedSource awards this FLRA s (Esquire (Esquire Deposition Service is considered a lar (Esquire Depo concern), concern), the FLRA will be vulnerable to having its for businessbusiness contractors whbusiness contractors who abusiness contra services (through BPAs) file claims against the FLRA.

TheThe FedSource contractor, Esquire DeposThe FedSource contractor, Esquising smallsmall business contractosmall business contractor asmall business contractor asmall business contractor asmall business contractor below used by the FLRA forber used by the FLRA former cbe used by the FLRA (who(who were all small business contractors) as a basis for a bi(who protest against the award.

IX. FINDINGS AND RECOMMENDATIONS

FFindingFinding 1Finding 1: In spite of management training in con sseservices, services, FLRA management has not been properly executi contracting services to minimize time, costs and problems.

RecommendationRecommendation 1: FLRA should improve its cRecommendation forfor bothfor both internal and external contracting and should involve input from managers who will be affected by the outsourced actions.

FindingFinding 2: WhileFinding 2: While the useFinding 2: While the u thethe last nine months has nthe last nine months has not, the last nin normally used for material purchases, not Federal services.

RecommendationRecommendation 2. FLRA management needs Recommendation 2 contracting in a timely manner.