



OIG

Office of Inspector General

U.S. Department of State • Broadcasting Board of Governors

ESP-18-02

Office of Evaluations and Special Projects

March 2018

Management Assistance Report: Incorporation of Clause Requiring Contractor Cooperation with the Office of Inspector General

MANAGEMENT ASSISTANCE REPORT

Summary of Review

The Foreign Affairs Manual grants the Office of Inspector General (OIG) the authority to access contractor records and interview contractor employees. However, this authority is not incorporated into contracts signed by the Department of State (Department), which has occasionally led to confusion on the part of contractors as to their duty to cooperate with OIG. Therefore, OIG recommended that the Department require contracting officers to insert a clause into all contracts requiring contractors to grant OIG access to records and employees.

BACKGROUND

OIG was established to conduct audits, inspections, and investigations relating to the programs and operations of the Department.¹ In connection with this authority, the Foreign Affairs Manual (FAM) requires that Department contractors and subcontractors promptly and without interference or undue inquiry provide requested assistance and information to OIG personnel.² However, the Department does not incorporate this requirement into its contracts, and OIG has sometimes encountered confusion or resistance by Department contractors as to their duty to cooperate with OIG.

In March 2017, OIG began discussions with the Department to request the addition of a provision to the Department of State Acquisition Regulation (DOSAR). This provision would mandate insertion of a clause requiring cooperation with OIG into all Department contracts. In April 2017, OIG briefed the leadership of the Office of the Procurement Executive (A/OPE) within the Bureau of Administration on this request and has had several other meetings and teleconferences with officials in A/OPE and the Office of the Legal Adviser throughout 2017. Despite these numerous discussions, the Department still has not added a cooperation clause to the DOSAR.

FINDINGS

As noted above, the FAM requires all Department contractors and subcontractors to promptly and without interference or undue inquiry provide requested assistance and information to OIG personnel carrying out OIG's official responsibilities.³ This duty includes providing access to records and honoring OIG requests to interview individual employees. OIG routinely relies on this authority to conduct its audits, inspections, evaluations, and investigations.

While this authority is set out in the FAM, the Office of Acquisition Management (AQM), which is responsible for contract administration at the Department, does not incorporate language regarding the duty to cooperate with OIG into its contracts. Furthermore, AQM officials acknowledge that contractors are either unaware of FAM provisions that require cooperation or do not consider themselves bound by provisions of the FAM that are not incorporated into the contract. The lack of such a contract provision has occasionally led to confusion by contractors when OIG has approached them for information.

¹ Inspector General Act of 1978, 5 U.S.C. App. § 2; Foreign Service Act of 1980, 22 U.S.C. § 3929.

² 1 FAM 053.2-5(c).

³ 1 FAM 053.2-5(c).

Other agencies have ensured that contractors understand their responsibility by inserting a clause that requires cooperation with the Inspector General into contracts signed by the agency. For example, the Department of Interior Acquisition Regulation includes a provision instructing the contracting officer to insert a clause into certain contracts requiring the contractor to provide the Inspector General access to records and the right to interview contractor employees.⁴

In addition, the Department requires similar language with regard to grants. In particular, every grant must contain a provision requiring grantees to give OIG "timely and unrestricted access to any books, documents, papers, or other records...that are pertinent to the award, in order to make audits, examinations, excerpts, transcripts, and copies of such documents."⁵ This right of access also includes timely and reasonable access to a non-Federal entity's personnel for the purpose of interview and discussion related to such documents.

The incorporation of such a clause into the DOSAR would ensure that contractors as well as grantees understand that OIG is entitled, not only by Department policy, but by the terms of the contract, to access contractor records and to interview contractor employees.

RECOMMENDATION

OIG recommends the Bureau of Administration, Office of the Procurement Executive, amend the DOSAR to include a provision requiring contracting officers to insert a clause in contracts requiring cooperation with OIG. Its complete response can be found in the appendix.

Recommendation 1: The Bureau of Administration, Office of the Procurement Executive, should amend the Department of State Acquisition Regulation to require contracting officers to include a provision requiring contracting officers to insert a clause in all current and future contracts stating:

- "(a) This contract incorporates by reference 1 FAM 053.2-5, which mandates the contractor's and/or any subcontractor's duty to cooperate fully with Office of Inspector General personnel.
- (b) Cooperation includes:
 - (1) Complete, prompt, and free access to all files (in any format), documents, premises, and employees, except as limited by law, including access to records, premises, and employees;
 - (2) Statements, both oral and written, including statements under oath or affirmation;
 - (3) Technical consultation, examination, and assistance regarding information or evidence being collected or developed;

⁴ 48 C.F.R. § 1452.215-70.

⁵ The U.S. Department of State Standard Terms And Conditions, at 15 (2015), available at <https://www.state.gov/documents/organization/271865.pdf>.

- (4) Such other information and assistance as may be requested in order to complete the OIG activity.”

Management Response: In its February 26, 2018, response, the Office of the Procurement Executive agreed with the recommendation. It stated that Department personnel are coordinating with Office of Inspector General personnel and described the status of its internal review processes.

OIG Reply: The recommendation can be closed when the Department of State Acquisition Regulation is formally amended to reflect this change.

APPENDIX: MANAGEMENT RESPONSE



United States Department of State

Washington, D.C. 20520

February 26, 2018

MEMORANDUM

TO: OIG – Jeffrey D. McDermott (Acting Assistant Inspector General)

FROM: A/OPE–Paulette Donnelly (Acting Procurement Executive)

SUBJECT: DOSAR Clause Requiring Contractor Cooperation with the Office of
Inspector General

The Office of the Procurement Executive (OPE) is in agreement with the Office of the Inspector General's (OIG) request for a DOSAR clause. The clause will require contractor cooperation with the Office of Inspector General.

Annette Gray from the Policy Division is currently working with Kevin Donohue, OIG Deputy General Counsel on the contract clause. The clause was submitted to OPE, AQM, and L/BA for review and is still an internal working document. It was also listed in the Spring 2018 Unified Agenda to L/M.

02/26/18

Date

Paulette Donnelly
Procurement Executive (Acting)



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