

Office of INSPECTOR GENERAL

Audit Report

*Evaluation of the Commission's Compliance
with Requirements of Public Law 101-121
on Lobbying Activities*

Report No. IG-02-91



November 1990

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UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, D.C. 20436

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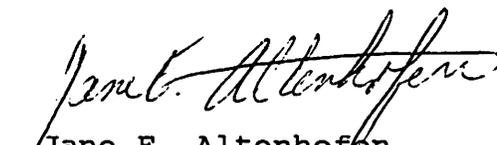
**EVALUATION OF THE COMMISSION'S COMPLIANCE
WITH REQUIREMENTS OF PUBLIC LAW 101-121
ON LOBBYING ACTIVITIES**

Federal law requires that none of the funds appropriated by any Act may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal action. The objective of this review was to evaluate the Commission's compliance with, and the effectiveness of, the requirements imposed by the law on the Commission, persons requesting or receiving Federal contracts, grants, loans, or cooperative agreements from the Commission, and persons requesting or receiving from the Commission commitments providing for the United States to insure or guarantee loans.

We found that the Commission had taken adequate steps to implement the law by notifying contract specialists and a Contracting Officer's Technical Representative (COTR) of the lobbying provisions. The Commission had not filed a report to Congress in March 1990, as required, stating that no information specified in the law had been received. The Office of Administration will include this statement in the next semiannual report to be submitted by November 30, 1990. We have no recommendations for improvements, although we do suggest that specific language on reporting suspected violations be incorporated into the memoranda to the COTRs.

The Director of Administration agreed with our findings and to implement the suggestion. His comments are presented in their entirety as an Appendix to this report.

The law requires that the Inspector General's report be submitted at the same time the agency submits its annual budget justification to Congress. Accordingly, this report should be included with the fiscal year 1992 budget package submitted to Congress in January 1991.



Jane E. Altenhofen
Inspector General

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dated November 20, 1990, on Draft Report**

INTRODUCTION AND SCOPE

On October 23, 1989, the President signed into law the Department of the Interior and Related Agencies Appropriations Act for FY 1990 (Public Law 101-121, hereafter referred to as the Act). Section 319 of the Act amends Title 31, United States Code, by adding a new section 1352, entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions." Section 319 states that none of the funds appropriated by any Act may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal action.

The Act also requires that the Inspector General conduct an evaluation. As stated in the Act, the Inspector General is to evaluate the Commission's compliance with, and the effectiveness of, the requirements imposed by this section on the Commission, persons requesting or receiving Federal contracts, grants, loans, or cooperative agreements from the Commission, and persons requesting or receiving from the Commission commitments providing for the United States to insure or guarantee loans.

Our review was conducted in October 1990. The audit was performed at the Commission headquarters in Washington, D.C., in the Procurement Division, Office of Management Services (OMS), Office of Administration. We interviewed employees with responsibility for developing and implementing agency policy and procedures concerning the lobbying provisions. We also reviewed procurement records, such as policy documents and contract files.

Section 1352 took effect with respect to Federal contracts, grants, loans, cooperative agreements, loan insurance commitments, and loan guarantee commitments entered into or made more than 60 days after the date of enactment of the Act (December 23, 1989). Our review was limited to Federal contracts as the Commission does not have grants, loans, or cooperative agreements.

The law was applicable to all contract transactions for over \$100,000 initiated after December 23, 1990, the effective date of the law. During the effective period, no solicitations or modifications to contracts covered by the law for over \$100,000 were initiated. One contract for over \$100,000 was awarded.

This review was performed in accordance with generally accepted government auditing standards. Accordingly, the review included an examination of internal controls and other auditing procedures that were considered necessary under the circumstances.

BACKGROUND

The Act requires the Director of the Office of Management and Budget (OMB) to issue government-wide guidance for agency implementation of, and compliance with, the requirements of section 1352. OMB published this guidance in the Federal Register on December 20, 1989.

The Conference Report indicated that the conferees "expect that all agencies shall expeditiously promulgate regulations to implement the requirements of this section, and that all such regulations shall be uniform and comply with the guidance issued by OMB." The OMB guidance stated that three agencies were to co-sign a common rule to appear in the Federal Acquisition Regulation (FAR) for most contracts. These agencies, the Department of Defense, General Services Administration, and National Aeronautics and Space Administration, are authorized to issue FAR rulemaking effective for all executive departments and agencies. The common rule was published in the Federal Register on January 30, 1990.

OMB also designated twenty-nine major agencies to sign a nonprocurement common rule for contracts not subject to the FAR, grants, loans, cooperative agreements, loan insurance commitments, and loan guarantee commitments. This rule was published in the Federal Register on February 26, 1990. The Commission was not one of the 29 designated agencies and did not voluntarily issue a rule as the Commission does not have separate regulations implementing the FAR and does not have nonprocurement transactions.

FINDINGS

We found that the Procurement Division took timely and adequate steps to implement the law and regulations. The Commission did not submit a report to Congress on March 31, 1990, as required by the law. The Commission had no information to report and was unaware of OMB guidance that a negative report should be submitted in this situation. The Director of Administration has taken steps to ensure a negative report is submitted in the future if there is no information to report.

IMPLEMENTATION

We found that the Procurement Division took timely and adequate steps to implement the law and regulations. The Commission has not formally designated officials as required by the FAR but met the intent of these provisions in a memorandum sent to the Contracting Officer's Technical Representative (COTR).

In brief, the law requires that solicitations with an estimated cost of over \$100,000 must include a certification from the bidders on lobbying activities. On all contract transactions (awards and modifications) initiated after the effective date of the law, the successful bidder must sign a disclosure statement prior to the contract award and file quarterly updates on any significant changes in lobbying activities.

On February 5, 1990, the Chief of the Procurement Division notified all division staff of the FAR guidance issued on January 30, 1990. The staff were instructed to take the necessary steps to ensure that, when transactions exceeded \$100,000, the required provision was included in the solicitation and the clause in the contract awards.

In September 1990, a contract was awarded for over \$100,000. The contract specialist had the contractor sign a disclosure statement before the contract was signed by the Commission's contracting officer. The Chief of the Procurement Division notified the COTR via a memorandum that the contractor was required to file an updated disclosure at the end of each calendar quarter when changes occur which affect the accuracy of the information contained in the disclosure filed by the contractor at the time of the award. Furthermore, it was the COTR's responsibility to remind the contractor of this requirement and ensure that timely reports of such changes are filed.

The Commission has not formally designated officials as required by two sections of the FAR. Section 3.804 (b) states that the contracting officer shall forward a copy of all contractor disclosures to the official designated in accordance with agency procedures for subsequent submission to Congress. Section 3.806 states that suspected violations of the requirements of the law shall be referred to the official designated in accordance with agency procedures.

The Chief of the Procurement Division said that a formal designation was not necessary due to the size of the Commission. The memorandum to the COTR did contain instructions to send copies of the disclosure statements to the Procurement Division. The Division prepares all procurement related reports which are transmitted through the Directors of OMS and Administration for the Chairman's signature. Implicit in these instructions is the requirement for the COTR to report any suspected violations. The Chief also said that if the Division heard any complaints about suspected violations, these would be reported to the Office of General Counsel.

If done on a consistent basis, we believe memoranda sent to the COTRs are sufficient to meet the intent of the FAR provisions concerning designated officials. However, we believe the Commission's compliance with section 3.806 and the COTRs' responsibilities would be clearer if the memoranda included specific language on reporting suspected violations. We suggest that terminology on reporting suspected violations be incorporated in the instruction memoranda issued to the COTRs when transactions subject to the FAR provisions are awarded.

SEMIANNUAL REPORTS

The Commission did not submit a report to Congress on March 31, 1990, as required by the law. The Commission had no information to report and was unaware of OMB guidance that a negative report should be submitted.

The Act imposes a semiannual reporting requirement on agencies with respect to the contractor's declarations. Specifically, the statute requires that the head of each agency shall collect and compile information contained in the disclosure statements filed during a six-month period ending on March 31 or September 30, respectively, of that year. On May 31 and November 30 of each year, the head of the agency is to submit a report with this compilation to the Secretary of the Senate and the Clerk of the House of Representatives. The OMB interim final guidance of December 20, 1989, states that agencies shall submit a negative report if no disclosure statements were received.

Since the effective date for the law was December 23, 1989, the first semiannual report should have been submitted on May 31, 1990. The Commission did not receive any disclosure statements during the applicable period of December 23, 1989, through March 31, 1990. The Commission should have, but did not, file a negative report. The Procurement Division was not aware of the OMB guidance of December 20 that included the requirement to file a negative report. The guidance issued in January did not include this provision. The General Counsel confirmed in an opinion dated October 5, 1990, that the Commission should have submitted a negative report.

The Director of Administration notified OMS on October 10, 1990, of the General Counsel's opinion. He instructed the office to include the periods ending March 31 and September 30, 1990, in the semiannual report due to be submitted by November 30, 1990.



AD-N-696

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

November 20, 1990

MEMORANDUM

TO: Inspector General

FROM: Director, Office of Administration *Tom J. Godrich*

SUBJECT: Draft Report, "Evaluation on the Commission's Compliance with Requirements of Public Law 101-121 on Lobbying Activities"

As requested by your memorandum dated October 24, 1990 (IG-N-107), submitted is the Office of Administration's response to the subject draft audit report issued on October 1990. In accordance with Section 11 of the USITC Directive 1701, the Commissioners have had an opportunity to comment on the response and the Chairman has approved it.

The Office of Administration has adopted the Inspector General's suggestions in the draft report and has no other comments.

Please call me at 252-1131 or Bill Stuchbery at 252-1135 if you have any questions.

cc: Commission
Director, Office of Management Services
Chief, Procurement Division