Date: September 12, 2014

To: Jackie J. Livesay, Vice President, Compliance

cc: Steve Altman, Senior Vice President, Business Affairs
    Ted Krichels, Senior Vice President, System Development & Media Strategy

From: Mary Mitchelson, Inspector General


In planning and performing our audit of the Public Radio Satellite System (PRSS) grant awarded to National Public Radio, Inc., (NPR), Audit Report No. APR1305-1402, we noted the following matter that we considered significant enough to merit Corporation for Public Broadcasting’s (CPB) action when awarding future capital equipment grants.

Specifically, we found there was no documentation available to support awarding $5 million to eight contractors noncompetitively. While this practice conformed to CPB’s grant agreement terms, it did not conform to either NPR’s or CPB’s own procurement policies. We recommend that future grants for radio and television interconnection system upgrades require all procurement decisions be documented to provide transparency and demonstrate the prudent use of CPB funds.

**Procurement Requirements**

During our audit we found that NPR complied with the terms of the grant agreement for the PRSS Upgrade. However, while complying with the grant terms, NPR awarded eight noncompetitive contracts totaling $5 million dollars without documenting why the sole source contracts were necessary and how it determined the contracts prices were reasonable. Such determinations were not required by the CPB agreement but were required under NPR’s and CPB’s existing policies for sole source procurements.

Various U.S. Government Accountability Office (GAO) studies have concluded that competition is a cornerstone of an acquisition system and a critical tool for achieving the best possible return on public investments. The benefits of competition in acquiring goods and services are well established. GAO also reported that competitive contracts can help save taxpayer money, improve contractor performance, curb fraud, and promote accountability for results.
Both NPR and CPB recognize these benefits; their procurement policies emphasize the importance of competition. For example, NPR procurement policy in effect during 2008 when NPR began awarding contracts under the PRSS grant stated that competition was the standard method for selecting contractors. This policy also required written justifications stating the reason for not using competition and to demonstrate why the contract prices were considered reasonable.¹

Similarly, CPB’s procurement policy Section III requires that procurements in excess of $50,000 must be awarded competitively unless there is a need for confidentiality, there is only one vendor practicably available, or in case of an unforeseen emergency. The policy also requires written determinations explaining the reason for confidentiality, that only one vendor was practicably available, or the basis of the emergency. A written determination is also required for all contracts awarded without competition to explain why the price is reasonable.

Further, CPB’s contracting policy Section 2.6.1 also requires written documentation for all consulting contracts valued at more than $50,000 that are awarded without competition. The written documentation must include: (a) the justification for forgoing competitive bids; (b) the process used to identify potential consultants; (c) the comparison of the relative merits of the consultants identified; (d) the basis for selection of the consultant chosen; and (e) the steps taken to assure a fair and reasonable price. This policy further provides that where comparative analysis is not feasible (for example when there is only one uniquely qualified provider), both the justification for sole source procurement and the steps taken to assure a fair and reasonable price must be documented in writing.

Despite the requirements of both NPR’s and CPB’s policies, the CPB grant agreement for the PRSS Upgrade permitted NPR to award contracts valued at up to over $1 million without competition. Moreover, the grant agreement did not require written justifications documenting why the sole source contracts were necessary, i.e., the specialized contractor qualifications required and why the prices were considered reasonable. The grant agreement required written justifications for a contract awarded noncompetitively only when the contract was valued at more than $1 million, as stated below:

Competitive Bidding . . . NPR shall obtain competitive bids for any portion of the Project (including construction, services or equipment) contracted out to third parties in excess of $1,000,000. Notwithstanding the foregoing, NPR may enter into such procurements without undergoing a competitive bidding

¹ NPR issued a new procurement policy in 2013 that required NPR departments to obtain competitive bids from at least three sources for all purchases with a total cost of $5,000 or more, unless a vendor is uniquely qualified or an emergency exists.
process provided that NPR provides a written explanation (which can be internally prepared by NPR’s responsible officers or qualified consultants. . .) setting forth why such arrangements are fair and reasonable. . . NPR shall provide CPB with such explanation, in writing, within a reasonable time after such procurement. . .

Section 3.17(b) of CPB Grant Agreement (Grant No. 11789).

During our audit we reviewed 11 contracts awarded by NPR, 8 of which were initially valued at less than $1 million and awarded noncompetitively. Seven of these contracts were to procure consulting services. The total value of the eight contracts, at the time of our audit was $5 million, ranging in value from $48,000 to more than $1.2 million.² Contrary to its own procurement policy, NPR did not prepare written justifications explaining the basis for any of these awards, i.e., why sole source procurements were necessary or how NPR personnel determined the contractors’ prices were reasonable. Nonetheless, NPR complied with the CPB grant agreement, because NPR was not required to compete these contracts. Moreover, the grant agreement required written sole source justifications only for contracts awards in excess of $1 million. The CPB agreement was silent in addressing documentation for sole source awards for contracts valued at less than $1 million.

NPR personnel explained that the contractors awarded sole source contracts had worked on the prior PRSS upgrades and were familiar with PRSS requirements. They also said that these contractors had provided good service in the past. We have no reason to doubt that NPR’s contractors provided acceptable performance in the past. To provide transparency and ensure the prudent use of CPB funds, however, CPB should ensure that future grants awarded for interconnection equipment upgrades require better documentation of procurement decisions (including sole source decisions for less than $1 million).

NPR’s and CPB’s procurement policies were established to ensure funds were prudently spent. Competing contracts enables both NPR and CPB to fulfill the stated purposes of their procurement policies, which include guarding against favoritism, fraud, improvidence and corruption, as well as to ensure that they obtain quality goods and services at the best price from technically qualified contractors in a transparent and impartial manner. The same safeguards should be used by grant recipients for major procurements like the PRSS to ensure the prudent use of the CPB grant funds.

² Although initially awarded for less than $1 million, annual amendments subsequently increased two contract values to more than the $1 million threshold specified in the grant.
Recommendations

We recommend that CPB management ensure that future grants agreements for major radio and television interconnection system upgrades address procurement requirements by requiring:

1. competitive procurements at dollar levels that conform to either the grant recipient’s or CPB’s procurement policies, whichever is more stringent; and
2. sole source and other noncompetitive procurement decisions to be documented, regardless of the dollar level, to include written justifications of the technical qualifications of the vendor and the basis for determining the reasonableness of the contract price.

CPB’s Response

In response to our draft management letter, CPB stated that in this particular instance it negotiated the requirements for competitive and sole source contracting in the grant agreement with NPR. CPB asserted that it assumed grant funds would be expended in accordance with NPR’s customary procurement policies and practices even though that requirement was not included in the agreement. CPB further stated that it generally assumes, but does not explicitly state in its agreements, that grantees will comply with their own policies and practices, including those that apply to procurement activities. CPB further assumes that a grantee’s compliance with those policies and practices is subject to review by a grantee’s auditors in the normal course of its business.

OIG Review and Comment

Based on CPB’s response we consider recommendations 1 and 2 unresolved pending CPB’s final management decision on our recommendations.

CPB’s response neither acknowledges the importance of competition in contracting for public investments nor proposes a method to ensure competition in future major CPB funded interconnection projects. Instead, CPB claims to have assumed that a grantee would follow its own procurement policy, notwithstanding the fact that the terms of the agreement set out procurement rules that varied from those of the grantee.

CPB’s position is implausible given the agreement. By negotiating the $1 million floor for contract competition in the agreement, NPR achieved flexibility far beyond that permitted by its procurement policy. It is simply illogical for CPB to assume that NPR planned to apply the stricter terms of its own policy in spite of the agreement language.

3 See Exhibit A for CPB’s complete response.
Further, CPB's position does not address the situation where a grantee has no procurement policy or one which does not favor competition. The advantages of competition in public contracting are well established, as recognized by CPB in its own procurement policy. CPB itself requires competition for any contract awards above $50,000, with limited exceptions that must be documented if they are invoked.

While the agreement in this matter did establish the $1 million threshold for competition and documenting sole source procurement decisions, this threshold is too high to provide the accountability and transparency needed for the large digital grant NPR received. CPB should impose a lower threshold to ensure that these funds are used in a prudent and financially responsible manner.

Our recommendations are addressed specifically to CPB agreements for major interconnection system upgrades. It is significant that the agreement with NPR that we audited, which underlines this management letter, was for $72.9 million. Further, planning for the next upgrade is underway, and its cost is expected to be even higher. Given this important investment of public funds, it is critical for CPB to ensure that the future grantees employ competitive contracting practices with written justifications for any sole source awards at least as strict as those that CPB itself follows.

We recommend that CPB reconsider its response and implement Recommendations 1 and 2.
VIA ELECTRONIC MAIL

Date:       June 19, 2014

To:         Mary Mitchelson, Inspector General

Cc:         Bill Richardson, Deputy Inspector General  
             Vincent Curren, Executive Vice President & Chief Operating Officer 
             William P. Tayman, Jr., Chief Financial Officer & Treasurer 
             West Smithers, Senior Vice President & General Counsel

From:       Jackie Livesay, Vice President, Compliance

Re:         Other Matters Correspondence regarding the Audit of Public Radio Satellite System Upgrade 
             Grant Awarded to National Public Radio, Inc. dated April 29, 2014

In the correspondence referenced above the Office of Inspector General (OIG) recommends that CPB ensure 
future grant agreements for major radio and television interconnection system upgrades address procurement 
requirements by requiring:

1. "Competitive procurements at dollar levels that conform to either the grant recipient’s or CPB’s 
      procurement policies, which is more stringent; and

2. Sole source and other noncompetitive procurement decisions be documented, regardless of the dollar 
      level, to include written justifications of the technical qualifications of the vendor and the basis for 
      determining the reasonableness of the contract price."

In this particular instance, CPB negotiated the requirements for competitive and sole source contracting in 
the grant agreement with NPR. It was assumed, though not expressly required by that agreement, that grant 
funds would be expended in accordance with NPR’s customary procurement policies and practices, which 
apparently was not the case. CPB generally assumes, but does not explicitly state this in its agreements, that 
grantees will comply with their own policies and practices, including those that apply to procurement 
activities. Compliance with those policies and practices is subject to review by a grantee’s auditors in the 
normal course of its business.

Sincerely,

Jackie Livesay
Vice President, Procurement