

**CORPORATION FOR PUBLIC BROADCASTING
OFFICE OF INSPECTOR GENERAL**

**EVALUATION OF CPB PROCUREMENT AWARDS
FOR THE PERIOD
OCTOBER 1, 2009 – APRIL 1, 2012**

REPORT NO. EPF1204-1302

March 29, 2013



**KENNETH A. KONZ
INSPECTOR GENERAL**



Corporation
for Public
Broadcasting

Office of Inspector General

Date: March 29, 2013

To: Robert M. Winteringham, Deputy General Counsel

From: *Kenneth A. Konz*
Kenneth A. Konz, Inspector General

Subject: Evaluation of CPB Procurement Awards for the Period October 1, 2009 – April 1, 2012, Report Number: EPF1204-1302

We initiated this evaluation in response to an anonymous allegation regarding CPB's procurement and grant award practices. We have reviewed the procurement and grant awards made by CPB for the period October 1, 2009 through April 1, 2012. The objectives of our review were to determine whether CPB: 1) procured goods and services in accordance with the *CPB Procurement Policy*, *CPB Contracts Policy*, and the *Project Officer Handbook*; 2) obtained goods and services (including productions) from the highest quality contractor or grantee at the most economical cost or price; and 3) utilized digital funds in accordance with the requirements specified in the appropriation.

Our evaluation of 19 contracts and 8 grants from the 745 contracts and discretionary grants awarded competitively or sole source found the following:

- 10 of 13 sole source justifications did not adequately document that the contractors selected were the only contractors "practicably" available or that an emergency existed;
- 3 of 4 production grant awards were not reviewed by an outside panel as specified by the Act;
- 4 of 4 grants for non-production services were not required to be reviewed by an outside panel;
- 6 of 6 competitive contract procurements provided assurance that contracts were awarded to qualified providers for a reasonable cost; and
- no evidence that digital funds were not used in accordance with the appropriation requirements.

Additionally, we observed that procurements recorded in GIFTS did not accurately describe agreements as either a contract or grant, or whether the agreement was competed or was sole source. Such classifications would assist in determining what procurement guidelines to follow in approving the contract or grant, as well as provide full accountability over procurement activities for planning and management oversight purposes.

Overall we concluded that CPB needs to adhere more closely to its procurement policies and procedures when awarding sole source contracts, as well as more consistently comply with the Public Broadcasting Act (Act) requirements when awarding national programming grants. Based on our evaluation we could not substantiate the allegations of favoritism in awarding contracts and grants from the documented records. To avoid any appearance of favoritism in awarding contracts and grants CPB should ensure that sole source justifications appropriately justify the reasons contractors are considered the only practicable option or that emergencies exist. Further, national programming proposals should be reviewed by an outside panel, as specified by the statute.

In response to the draft report, CPB management generally concurred with the findings and recommendations with respect to improved documentation of procurement decisions, particularly in cases of sole source or emergency determinations. Although they agreed that sole source procurements could have been better documented for some of the procurements highlighted in the report, management also believes that their decisions were justified and appropriate under CPB policy. They stated that their award decisions provided good value to CPB and represented a reasonable exercise of business discretion. CPB management also believes that content-related grant award decisions, which management stated were not subject to the procurement policy and its RFP process, could have been documented better to record their decision that an outside panel review was not practicable. CPB's complete response to the draft report is attached in Exhibit D.

This report presents the conclusions of the OIG. The findings and recommendations contained in this report do not necessarily represent CPB management's final position on these issues. Accordingly, the report contains recommendations the OIG believes would be appropriate to resolve these findings.

In accordance with CPB audit resolution procedures, CPB management is responsible for determining the corrective actions to be taken. Based on CPB's management response we consider recommendations 1a-e, and 2c unresolved and open pending CPB's final management decision on these findings and recommendations. Recommendation 2a and b are considered resolved but open pending corrective actions.

Our scope and methodology is discussed in Exhibit A. We performed our evaluation in accordance with the Counsel of the Inspectors General on Integrity and Efficiency's (CIGIE) *Quality Standards for Inspection and Evaluation*.

BACKGROUND

On February 9, 2012, CPB management received an anonymous complaint alleging mismanagement of a number of different activities, including procurements. CPB management referred this matter to our office for further review. We initiated this evaluation to address the allegation of favoritism in awarding contracts and grants.

CPB's guidelines for procuring goods and services are contained in the *CPB Procurement Policy*, the *CPB Contracts Policy*, and the *Project Officer Handbook* (Handbook). CPB's procurement policy applies to the procurement of goods and services, including consulting services. It does not apply to the negotiation, award, and administration of grants to public broadcasting and public telecommunication entities for the production and distribution of programming, and other program related activities, including program outreach and production training. The contracts policy provides general guidance for producing a quality business contract and describes the minimum documentation required for contract oversight. For the purposes of this policy "contracts" includes production grants. The Handbook contains, policies, guidelines, best practices, and process-related information to assist project officers effectively manage both grants and contracts. It also explains that there are two types of funding arrangements relevant to project officers—grants and purchases (contracts). CPB's Grants Information and Financial Tracking System (GIFTS) is an automated database used to track grants and contracts as they move through the CPB life cycle from proposal to completion of the project.

CPB Procurement Policy

The *CPB Procurement Policy* requires that sole source contracts are to be used for purchases where there is only one contractor "practicably" available for the project or purchase, or in the case of an emergency. The prior version of CPB's procurement policy used the term uniquely qualified instead of "practicably" available to justify sole source. The policy also requires that when making sole source procurements, the contract file should contain a written determination of the rationale for selecting the contractor and an explanation of why the price was reasonable. For emergency procurements the contract file must also include the basis for the emergency. CPB's procurement policy defines an emergency as an "urgent and unforeseen" situation. Most importantly, the Handbook establishes that the sole source option should not be used in most instances.

CPB Contracts Policy

The contracts policy establishes general guidance to produce a business contract of good quality that protects CPB assets and ensures an understanding of expectations by all parties. The policy also describes the minimum required documentation of management oversight.

Project Officer Handbook

The Handbook provides operating guidance to Project Officers to procure and oversee contracts and grants. The Handbook explains that there are two options when awarding contracts—competitive bids and sole source. Competitive bids are used to obtain multiple competitive responses (prices) from various bidders for the purchase of goods and services. This is the preferred method and includes a Request for Proposals (RFP) that formally announces the contract to prospective bidders. The *CPB Procurement Policy* requires RFPs to be posted to the CPB web site for at least 10 business days prior to the date that bids are required. The bidder selected is deemed to be responsible, fully qualified, and best suited based on the evaluation factors included in the RFP, such as quality, price, delivery date, and qualifications. RFPs are not mandated for grants and are not always used by CPB. Instead, grants are often awarded based on unsolicited proposals submitted by grantees.

The Handbook explains that CPB uses the term “contract” to refer to both grants and contracts. Further, project officers must follow CPB’s procurement policy when awarding contracts. The overall purpose of the procurement policy is to ensure that CPB operates in a prudent and financially responsible manner by purchasing high quality goods and services at favorable costs through purchasing procedures that are transparent, impartial, and competitive, while avoiding impropriety or the appearance of impropriety by CPB employees. It is also designed to improve accountability in business transactions that can benefit from more structured and objective decision-making procedures.

Procurement Activities

During FYs 2010 and 2011, CPB expended approximately \$525 million and \$496 million, respectively for contracts, grants and corporation administration expenses. These expenditures included funds used for radio and television Community Service Grants (CSG), Interconnection and Fiscal Stabilization Grants, and other nondiscretionary grants, as well as for various CPB expenses such as salaries. These expenditures are not recorded in GIFTS and are not competitively awarded because nondiscretionary grants are statutorily mandated.

CPB’s GIFTS database records award information related to all CPB contracts and discretionary grants. GIFTS records whether the procurements are competitive or sole source, but does not routinely identify grants. The procurement method identification field is generally left blank for grants.

For the period of our review, awards of more than \$389 million were recorded in GIFTS for the 745 discretionary grants and contracts awarded competitively or sole source. A detailed analysis by procurement type and fiscal year is presented in Exhibit B.

RESULTS OF REVIEW

We have evaluated CPB's practices for awarding contracts and grants for the period October 1, 2009 through April 1, 2012. CPB management is responsible for establishing procurement policies and procuring goods and services, as well as awarding national programming grants in accordance with the Public Broadcasting Act (Act).

Our evaluation was conducted in accordance with the CIGIE *Quality Standards for Inspection and Evaluation*, and accordingly, included evaluating, on a test basis, evidence of CPB's compliance with its procurement, contract, and grant award policies and performing such other procedures as we considered necessary. We believe that our evaluation provides a reasonable basis for our conclusions.

Our evaluation of 19 contracts and 8 grants from the 745 contracts and discretionary grants awarded competitively or sole source found the following:

- 10 of 13 sole source justifications did not adequately document that the contractors selected were the only contractors "practicably" available or that an emergency existed;
- 3 of 4 production grant awards were not reviewed by an outside panel as specified by the Act;
- 4 of 4 grants for non-production services were not required to be reviewed by an outside panel;
- 6 of 6 competitive contract procurements provided assurance that contracts were awarded to qualified providers for a reasonable cost; and
- no evidence that digital funds were not used in accordance with the appropriation requirements.

Additionally, we observed that procurements recorded in GIFTS did not accurately describe the agreement as either a contract or grant, or whether the contract was competed or was sole source. Such classifications would assist in determining what procurement guidelines to follow in approving the contract or grant.

Overall we concluded that CPB needs to adhere more closely to its procurement policies and procedures when awarding sole source contracts, as well as more consistently comply with Act requirements when awarding national programming grants. Based on our evaluation we could not substantiate the allegations of favoritism in awarding contracts and grants from the documented records. To avoid any appearance of favoritism in awarding contracts and grants, CPB should ensure that sole source justifications appropriately justify the reasons contractors are considered the only practicable option and that emergencies exist. Further, national programming proposals should be reviewed by outside panels, as specified by the statute.

FINDINGS AND RECOMMENDATIONS

Procurement Decisions Need to be Better Documented

We found that CPB needs to adhere more closely to its procurement policies and procedures when awarding sole source contracts, as well as more consistently comply with Act requirements when awarding national programming grants. To avoid any appearance of favoritism in awarding contracts and grants CPB should ensure that sole source justifications appropriately justify the reasons contractors are considered the only practicable option or that emergencies exist. Additionally, national programming proposals should be reviewed by an outside panel, as specified in the statute. Competing services enables CPB to fulfill the stated purpose of its procurement policy and ensures that it obtains the best goods and services at the best price from the best contractors and grantees in a transparent and impartial manner.

Various U.S. Government Accountability Office (GAO) studies have concluded that competition is a cornerstone of the acquisition system and a critical tool for achieving the best possible return on public investments. The benefits of competition in acquiring good and services from the private sector are well established. GAO also reported that competitive contracts can help save taxpayer money, improve contractor performance, curb fraud, and promote accountability for results.

While our sampling (Exhibit C) was skewed towards sole source procurements to address the allegations of favoritism in contract and grant awards, we found that CPB should clarify its existing sole source policies and procedures to better document its procurement decisions and implement formal policies addressing the need to have national programming proposals reviewed by outside panels. Specifically, our review of 19 contracts and 8 grants found that:

- 10 of 13 sole source justifications for contracts did not adequately document that the contractors selected were the only contractors “practicably” available (6 contracts) or that an emergency existed (4 contracts);
- 6 of 6 competitive contracts complied with CPB procurement requirements and provided CPB with reasonable assurance that contracts were awarded to qualified providers for a reasonable cost;
- 3 of 4 production grant awards were not reviewed by an outside panel as specified by the Act; and
- 4 of 4 grants for non-production services were not required to be reviewed by an outside panel.

Further, we could not always determine from the available documentation the origin of the contracts and grants in our sample, i.e., how the organizations knew that CPB needed their services. Based on our review of CPB records we identified indications that at times CPB personnel solicited the proposals but did not open the process for full competition. We also noted that while CPB files contained a proposal and budget submitted by grantees we could

not determine if or how the project was advertised, or if it resulted from an unsolicited proposal. Such practices leave CPB vulnerable to the kind of complaints of favoritism that prompted this review.

While we found that 15 of 25 contractors or grantees tested had received previous CPB contracts or grants, we could not conclude that favoritism was the basis for any of the awards in our sample based on the documented records and interviews. However, we noted that two sole source contracts were given to former CPB employees. Moreover, 5 of the 6 sole source procurements lacking adequate documentation that the contractor was the only contractor practicably available had received prior CPB contracts. These occurrences lend credence to allegations of favoritism, particularly when award decisions are not transparent and adequate documentation is not provided justifying the award. Since the complaint was anonymous, we were unable to identify the source of the complaint alleging favoritism to identify and review the specific contracts or grants referenced in the complaint.

Documenting Sole Source Decisions

Our review of 13 sole source contracts found that 10 of the procurement decisions were not adequately documented. CPB's policy describes several types of sole source procurement justifications including: 1) the contractor was the only contractor "practicably" available; or 2) that an emergency/urgent need existed. Our review found that these decisions were not adequately documented to demonstrate the basis for these decisions under CPB's guidelines. CPB should clarify its existing sole source policies and procedures to ensure that its project officers better document procurement decisions when these circumstances arise.

Only Contractor "Practicably" Available Decisions

Sole source justifications for 6 of the 10 contracts did not adequately document the reasons why CPB personnel considered specific contractors to be the only practicable option. These award decisions ranged from multi-million dollar awards made under the Federal Ready to Learn program to awards for under \$100,000 to prepare the CPB Annual Report.

The *Project Officer Handbook* provides that sole source contracts should be used when there is only one vendor "practicably" available for the project, and that "this option should not be used in most instances." Further, discussions with CPB officials regarding their view of "practicably" indicated they believed it to mean the sole source contractor was the only vendor "practicably" or feasibly available to provide the services being procured.

However, CPB's application of "practicably" did not conform to this definition. For the most part, CPB personnel used sole source contracting to obtain the services of contractors who had done good work for CPB in the past, or whom they believed had unique qualifications. We found that there was not sufficient evidence provided in the sole source justifications to substantiate why a contractor was determined to be the only practicable option. Further, under the federally awarded Ready to Learn grant, U.S. Department of Education

procurement guidelines require grantees to perform cost analysis of proposals to support award decisions made without competition, which did not occur.

The following examples present the justifications CPB used to support the sole source award decisions and our evaluation of these decisions.

Ready to Learn Contractor Award Decisions

CPB, in collaboration with PBS, was awarded a \$72 million grant from the U.S. Department of Education for a Ready to Learn initiative, of which \$15 million was used for research. Under this initiative, CPB awarded two sole source contracts for research—contract #13871 was awarded for \$10 million and contract #13872 for \$5 million—because the contractors were considered uniquely qualified or had a favorable work history with CPB. While the justification for the second contract was essentially the same as the first, the sole source justifications for contract #13871 stated that the contractor:

...served as CPB's evaluation partner in the last grant and was selected to partner with CPB/PBS in this grant because of the unique qualifications ... [they bring] to helping us meet the evaluation goals and objectives solicited by the [U.S. Department of Education] RFP.

We had an important and successful partnership ... in the last round The evaluations they conducted for us were regarded highly by CPB and the U.S. Department of Education.

As a practical matter, even if we went through a formal procurement process, it is highly unlikely any other organization would be better qualified for this work

To justify that the contractor's price was appropriate the justification stated:

The RFP for Ready to Learn required that a percentage of the budget be set aside for evaluation. CPB/ PBS negotiated with ... [the contractor] to keep its budget within CPB's desired limit. Its costs are comparable to the previous evaluation it conducted for CPB.

While we have no reason to doubt that these contractors provided acceptable performance in the past, the CPB justification did not substantiate that they were the only contractors "practicably" available to provide these services. CPB's sole source justification stated that it is "highly unlikely" an RFP would identify a more qualified contractor. However, without issuing an RFP to obtain responses from other contractors, or providing some other documented substantiation to show that no other contractors could or would provide the evaluation services needed, we have no basis to judge that the contractor was the only practical option or that CPB procured services from the best contractor at the best price.

Subsequent discussions with CPB personnel indicated that there was another reason for using sole source for these two contracts. They explained that CPB did not have sufficient time to issue an RFP for 10 days and consider other contractors because of the timing of the grant announcement (RFP) issued by the U.S. Department of Education. However, this was not the basis on record to justify these sole source procurements.

Further, regardless whether the award was made based on the contractor being the only one practically available or on an emergency basis, CPB did not adequately document the procurement decision to satisfy the U.S. Department of Education General Administrative Regulations and Other Applicable Grant Regulations (EDGAR), that were applicable to these two contract awards. EDGAR requires that when a contract is awarded without competition or only one bid is received in response to a solicitation, CPB was responsible to maintain records of its pre-award review, the RFP, and independent cost estimates. As part of its pre-award review CPB was required to perform cost analyses for these procurements. However, CPB did not comply with these requirements for these two Ready to Learn contracts because RFPs were not issued and the cost analyses were not performed as required by EDGAR.

Contract #14516 Decision

Contract #14516 was a sole source consulting agreement for the writing, design and production of CPB's FY 2011 annual report. The sole source decision was justified because the contractor was considered to be uniquely qualified based on past work. The concurrence form for this contract, dated February 2012, explained that because CPB had recently awarded a sole source contract to another vendor to redesign its Web site, the 2011 annual report must be done on something of an interim basis pending completion of the Web site redesign. The concurrence further stated that this would minimize the amount of staff time that CPB would have to devote to bring a new vendor "up to speed" just for the 2011 report.

What the 2011 concurrence did not state was that this same contractor was awarded a sole source contract to produce the 2008 – 2010 annual reports because she had been chosen competitively in 2005 through 2007, and because "the reports had been so well received." While the 2007 contract award began as a competitive procurement, our review of the supporting information for this contract disclosed several anomalies in the evaluation factors that made the decision less than transparent, even though CPB's procurement policy requires contracts awards be transparent.

In effect, this contractor was awarded the subsequent 2008-2010 contracts sole source based on the 2007 competitive award that was less than optimally transparent. Further, this same contractor received a sole source contract for the preparation of the 2011 annual report because of a Web site redesign. The justification for the 2011 contract award becomes further questionable when CPB cancelled the Website redesign 3 weeks after CPB awarded the 2011 contract for the annual report.

Contract #14485 Decision

Contract #14485 was another contract awarded based on unique qualifications and past work experience. The concurrence explained that sole source was appropriate because this contractor:

...has administered and managed SABS/SAS for the past seven years. Presently, the technical components and the procedures required to launch and administer surveys are known only to ... [this contractor]. CPB staff and other vendors do not have the capability to launch and administer SABS/SAS.... For this reason, it would not be practical to use another vendor...therefore, we are sole sourcing the administration and management of SABS/SAS....

The concurrence also explained that the price for the 2011 sole source contract was appropriate because it was comparable to the 2009 and 2010 contracts that were competitively bid. However, being able to competitively bid the 2009 and 2010 contracts contradicts the concurrence statement for the 2011 contract that only the incumbent had the knowledge of the technical components and procedures needed for the 2011 contract.

Our review of the scoring for the 2009 and 2010 contracts disclosed other contractors' proposals received scores close to the incumbent contractor's score. For example in 2010, a competing contractor's proposal received a score of 16.6 versus the incumbent's score of 17.4. While CPB complied with the procurement policy when it awarded the contract to the incumbent in 2010, that award did not justify awarding the 2011 contract on a sole source basis because CPB believed no other contractor had the capability to perform the services requested. A score of 16.6 evidences a level of capability, albeit not as high as the incumbent's since they had worked on this project for seven years. However, CPB should have competitively bid the 2011 contract to ensure they obtained these services at a reasonable price. The contractor who lost the 2010 award (with the 16.6 score), bid 20 percent or almost \$51,000 less than the incumbent's bid. Competitively bidding the 2011 contract awarded for \$185,000 could have possibly identified other qualified contractors, saved CPB funds, and provided more transparency.

Emergencies and Urgent Need Decisions

CPB awarded 4 of the 10 questioned sole source contracts based on unjustified emergencies and urgent need. CPB's procurement policy Section II defines an emergency as an "urgent and unforeseen situation that requires immediate acquisition of goods and services." Our review of these 4 sole source procurement justifications did not adequately document that an emergency existed. The following examples present the justifications provided to support the sole source award decision.

Contract #14374 Decision

The sole source justification for contract #14374 stated that the project needed to be completed by the end of the fiscal year, but did not explain why. The proposal submitted by the contractor was dated July 11th and the contract was not awarded until August 29th. According to the contract terms, the contract was to cover the period August 29, 2011 through November 21, 2011. The sole source justification did not identify an emergency that was an unforeseen event, and only touted the expertise of the contractor selected, a former CPB employee.

It is also important to note, that the services obtained under this contract, initially awarded for \$20,000, were not particularly specialized—i.e., develop communications strategies. Subsequently, CPB amended this sole source contract to increase the scope of work to include web site design, increasing the contract price to over \$50,000, and extending the contract performance period to June 2012. These amendments were made without obtaining the approval of the COO, which was required by the CPB Amendments Policy when the contract price was increased by more than 10 percent or \$25,000.

Contract #14067 and # 13914 Decisions

We also found that CPB at times piggy-backed the procurement of routine services onto contracts that were originally sole sourced because of an emergency. Two such examples were contracts #14067 and #13914.

CPB awarded contract #14067 sole source for \$240,000 because they needed a contractor to provide analysis for an upcoming congressional hearing. Although we could not determine from the procurement files when CPB first knew it needed to prepare for the hearing, our review disclosed that: 1) the April 6th congressional hearing was cancelled before the contract was signed on April 7th; and 2) the contract required the contractor's services until June. When we asked why the contractor needed to provide its services until June, the project officer told us that the contract scope was expanded to include other work (Phase2), and that the contract was signed after the hearing was cancelled because CPB believed the information the contractor was going to provide would still be of value.

Contract #13914 was a \$70,500 contract awarded sole source when CPB was faced with an emergency situation because the FCC issued a proposed rulemaking with an unusually short timetable to accept comments. However, CPB's justification did not explain that this contract included three separate tasks but only one of the tasks was related to the FCC rulemaking project. The other two tasks were for non-emergency matters and suitable for competitive procurements.

Review Panels Needed for Production Grants

Our review of eight grants found that four grants were for media content or productions for national programming. Only one of these four grants was reviewed by an outside panel as specified by the Act. These reviews are especially important considering that grants for

national programming are usually the high dollar value awards. The three national programming grants we found that were not reviewed by an outside panel ranged in value from \$1 million to \$2 million.

The Public Broadcasting Act Section 396(g)(2)(B)(i) authorizes CPB to award grants to public telecommunications entities, as well as independent producers and production entities for the production or acquisition of public telecommunications services to be used by public telecommunications entities, i.e., national programming. This section of the Act also requires CPB “to the extent practicable” to appoint panels of outside experts representing diverse interests and perspectives to evaluate the proposals received for these grants on the basis of comparative merit.

The Act further stipulates that when CPB awards funds for the production or acquisition of national programming, the Corporation shall make available for public inspection the grant and solicitation guidelines for proposals of such programming and the reason for selecting the proposal. In effect, the Act requires that when awarding discretionary grants for national programming, CPB shall to “the extent practicable” solicit proposals and have panels of outside experts evaluate the proposals received.

The *Project Officer Handbook* Section 3 explains that grant proposals can be either solicited or unsolicited. Section 4 explains that although grants are not subject to the procurement policy, RFPs used to solicit grant proposals shall be fair, transparent and reviewed by the CPB Office of Business Affairs. Section 4 of the Handbook under the heading entitled *Procurements and Competitive Grants* also explains that similar to contracts, grant proposals are expected to be evaluated in a consistent and transparent manner by at least three qualified individuals, and that the selection criteria and associated weights must be established before the review process. While the Handbook defines that there are two types of panel reviews—internal and external—it does not specify that the panels used for grants must be external as required by the Public Broadcasting Act. However, the Handbook does specify that if a panel review is not possible, the project officer should document the reason. The Handbook also requires that proposal evaluation sheets shall be used to score each reviewed proposal and that in most cases grant proposals shall undergo a panel review.

The project files for the eight grants we reviewed disclosed that three of the four national programming grants were not reviewed by panels of outside experts as required by the Act. Our analysis of the grant award documentation is presented in the following table.

Analysis of Grant Award Documentation

Grant Number	Media Content/ National Programming	External Panel Review	Internal Panel Review
13375	Yes	No	No
13874	Yes	No	No
14072	Yes	No	No
13766	Yes	Yes ¹	N/A
13976	No	Yes	N/A
13938	No	N/A	No
14141	No	N/A	N/A
14554	No	N/A	No

1 Panel review was for the phase 1 grant, we audited the phase 3 grant.

Also, CPB’s procurement records did not indicate whether the grants resulted from solicited or unsolicited proposals, or if RFPs were issued. CPB’s records for 5 of the 8 grants reviewed also did not document the reason that the external panels required by the Act (3 of 4 grants) were not used to evaluate the project, or contain evidence of internal panel reviews (2 of 4 grants) and indicate if evaluation sheets were used to evaluate the proposal.

CPB’s Concurrence form asks the program officials several questions to explain to concurrence officials the reasons for awarding the grant. For all four grants awarded for media content, the concurrence forms were incomplete and did not document:

- the procurement method used for awarding the grants i.e., sole source or competitive;
- why the procurement method used was appropriate;
- why this entity was selected;
- the results of the internal and/or external panel review;
- how CPB knew the project costs were appropriate; and
- the results of the market analysis.

Discussions with CPB personnel disclosed that this information was required only for contracts, and if the project was for a grant to obtain media content, it was not necessary to provide this information. Based on our evaluation of the form, we can appreciate the project officers’ understanding. The form initially asks if the project will result in media content. If the answer is “yes”, the project officer is not required to indicate the procurement method. A procurement method only needs to be indicated for contracts. The next question asks why the sole source procurement method was appropriate. Again, CPB personnel explained there is no response needed to this question for media content (grants).

CPB personnel further explained they were not required to answer the questions concerning why the entity was selected, the results of panel reviews, appropriateness of costs, and the results of market analysis for grants. CPB needs to revise its guidance to project officers to

require that all applicable questions on concurrence forms are completed not only for contracts but also for grants. This will provide additional accountability over grant procurement decisions and provide management information for future planning and oversight purposes.

Recommendations:

- 1) We recommend that CPB revise its policies and procedures to improve the documentation of solicitation and award decisions by:
 - a) Requiring project officers to improve justifications for contractors and grantees that are considered the only practicable option. These justifications should be substantiated and include more than the selected contractor's qualifications and past performance histories. For non emergency procurements issuing an RFP should be the first option instead of using contractors' qualifications and performance histories to deem a contractor as the only practicable option for obtaining goods and services.
 - b) Revising the procurement policy to emphasis that emergencies must be unforeseen and that non emergency projects should not be combined with projects being awarded because of an emergency. This revision should also emphasize that the lack of advance planning should not be used to necessitate an emergency procurement.
 - c) Revising guidance to project officers to require them to complete questions on concurrence forms related to procurement method, why grantee was selected, results of the panel review, and why the proposed costs were considered reasonable.
 - d) Requiring that, to the extent practical, external review panels are used to evaluate proposals prior to awarding grants for national programming, as required by the Public Broadcasting Act. When panels are not used, the reasons for not doing so should be documented, as required by the Project Officer Handbook Section 4.
 - e) Ensuring CPB contract and grant files document proposal evaluation sheets, including any weighting factors used in the evaluation, in accordance with the Procurement Policy.

CPB Management Response:

CPB's response stated that the report implies that CPB grants for media content should be awarded and documented in a fashion similar to the award of consulting and other contracts under the procurement policy. This is apparently based on a reading of the Project Officers Handbook and CPB's concurrence forms which relate to but do not govern the formal procurement process. The Handbook encourages use of a competitive process to award grants, and the concurrence process questions the manner in which a grant or contract was procured. Yet the procurement policy, which alone governs how goods and services shall be purchased, clearly exempts content-related grants from the RFP process. Management will clarify its operating procedures and guidance, and we have already modified the Project Officers Handbook to avoid any inference that it somehow supersedes CPB's procurement and contracting policies.

The report critiques selected contracts that CPB awarded on a sole source or emergency basis, the two exceptions to the general requirement for open competition under CPB's policy. Most were sole source, for which the policy requires "a written determination that there is only one vendor practicably available for that which is to be procured...." The key phrase, "practicably available," does not mean that the vendor selected must be unique, or that there is no possibility that another vendor could perform the contract. In a procurement context, "practicably available" simply means that there is a *reasonable expectation* that there is only one vendor, or that open competition would not yield a different result.

Following is a brief summary of the explanations that CPB provided in response to the draft report for some the procurements discussed in the report. CPB's complete response explaining their decisions is presented in Exhibit D.

Contracts #13871 and #13872 (Ready to Learn Research)

Regarding Contracts #13871 and #13872, CPB was in a "Catch 22" situation, where it had to name vendors in its grant application before it had any assurance they would receive the grant. A formal pre-grant procurement (even if time permitted, which in this case it did not) would have been hypothetical with no assurance of a grant to fund the vendors' contracts until long after proposals were submitted. Likewise, a post-grant procurement would have been disingenuous because the firms had already been named, as required, in the grant application.

For these reasons, CPB's written justification, that the selection of alternative firms through an RFP was "highly unlikely," reflects the reasonable and practicable expectation of what would happen. This is precisely the kind of justification that the procurement policy requires to support a sole source decision. Additionally, during December 2012, the US Department of Education announced a rulemaking that would amend EDGAR to enable selection of a partner firm without a formal post-award competitive procurement.

Contract #14516 (CPB Annual Report).

The sole source vendor selected to do the 2011 annual report (Contract #14516) was competitively selected by RFP to produce previous reports in 2005, 2006 and 2007. Those competitive procurements were followed by a three-year sole source contract to continue production in 2008-2010. After competitively selecting the same vendor for 2005-2007 it was practicably beyond doubt that the same vendor was best suited to continue production, at least for the near term. As with other procurements addressed in the report, these supporting facts may not have been as well-documented as possible, but they certainly sustain the sole source determination for the most recent production effort. Moreover, the cost of these services remained reasonable and consistent since the last competitive procurement, confirming that CPB was not financially prejudiced by continuing to use the same firm.

Contract #14485 (SABS/SAS Management)

The sole source award of contract #14485 was based on the vendor's unique qualifications gained over seven years of doing the same work. As the concurrence stated, "the technical components and the procedures required to launch and administer surveys are known only to [the incumbent contractor]." Since the only CPB employee familiar with SABS/SAS management departed in June 2011, CPB had no practicable alternative to using the incumbent vendor. By periodically competing this contract through RFPs, CPB confirmed that the incumbent was the only vendor practicably available. While another vendor could be trained to assume the work, CPB would have to retain the incumbent to train the replacement. With respect to reasonableness of the vendor's price, there should be little concern with this contract because the \$185,000 annual cost is less than it would cost CPB to perform the work with its own employees.

Contract #14374 (Communications Strategies)

Contract #14374 was needed to ensure the messaging and outreach components for the American Graduate Initiative would effectively influence outcomes in station communities. This communications and branding strategy was central to that effort, and much of the work had to be done before system meetings in August and CPB Board meetings in September and November 2011. The vendor selected in late July possessed the required qualifications as an award-winning communications, branding and marketing professional, and as a former CPB employee who required no learning curve and could begin work immediately. The subsequent amendment of the contract to perform related website design was a continuation of the same work, which equally qualified the incumbent as the only source "practicably" available. Admittedly, the basis for these decisions could and should have been better documented. Likewise, the failure to obtain COO approval on the concurrence form was an oversight.

Contracts #14067 and #13914 (Preparing FCC and Congressional Hearing Comments)

The report criticizes procurements of “routine services” that were “piggy-backed” onto emergency sole source contracts. Management agrees that it would be inappropriate if CPB had subsequently contracted with the same vendor for additional services unrelated to the initial procurement. However, the added services for contracts #14067 and #13914 represent a logical continuation of the underlying work for which the vendor was selected. The so-called “piggy-backing” makes good business sense and does not contradict CPB’s procurement policy. It represents a fair and efficient practice as long as the subsequent contract amendments do not represent a new or separate project outside of the scope of expertise for which the vendor was first selected.

Contract #14067 was for research to assist with CPB’s response to a congressional inquiry. Although the hearing was unexpectedly cancelled, CPB was still required to submit a written report to Congress on the same issue, and in a compressed time frame. Under the circumstances, it made no sense to postpone the work and issue an RFP because it was obvious that the same vendor would be chosen. Contract #13914 was also an emergency procurement to survey public media stations through “dynamic inquiries” for CPB’s response to a proposed FCC spectrum rulemaking, notice of which was too short to permit the RFP process. In addition to the initial survey, CPB needed follow-up inquiries to the stations. While it may have been possible to do a separate procurement for that service, it would not have been at all *practicable* because of the vendor’s knowledge of the issues, survey methodologies and contacts with subjects of the survey. The additional work, therefore, qualified as sole source under the policy.

Review Panels for Production Grants

With respect to the discussion of using outside panels to review production grants, we agree with the central point of your finding that provisions of the Communications Act requiring review of programming grant proposals “to the extent practicable” by external panels (§396(g) (2) (B)) and for public disclosure of information on grant guidelines and the selection of recipients (§396(l) (4) (B)) apply to radio as well as television grants. This is an oversight in our grant-making process that we will correct. We do not, however, agree with your conclusion that the Act requires CPB to “solicit proposals and have panels of outside experts evaluate the proposals received against the criteria formulated to solicit proposals.” The Act does not so provide, and production grants, as noted earlier, are not subject to the procurement policy. It is also important to note that most CPB production grants are *unsolicited*, consistent with our practice of relying on producing stations, not CPB staff, to propose public media content.

OIG Review and Comment:

Based on CPB's management response we consider recommendations 1a-e unresolved and open pending CPB's final management decision during audit resolution. Any implication regarding how CPB should solicit grant proposals was not based on the Handbook or concurrence forms. Conversely it was based on the Act, which requires CPB to make grant and solicitation guidelines for national programming, as well as the reason for selecting the proposal, available for public inspection.

While we agree that grants do not necessarily need to be awarded as a result of an RFP, we believe CPB should make available grant and solicitation guidelines, as required by the Act, so that any producer and the public is aware that CPB is accepting proposals for national programming grants. In that way, when CPB awards a multi-million programming grant, it can document that proposals were received in response to a specific or open solicitation call for national programming proposals, or that unsolicited proposals were evaluated by outside panels similar to the proposals received as a result of a formal solicitation. Making grant and solicitation guidelines available will ensure CPB complies with Section (l) (4) (B) of the Act and that grant awards are transparent and minimize the risk of criticism of favoritism in awarding contracts and grants.

CPB's comments that it will improve documentation for future grants to show that reviews by outside panels are not practicable should help make CPB's grant award practices more transparent. However, we believe the basis for not using an outside panel should be credible and not merely be justified as the only producer "practically available."

As with grants, CPB's acknowledgement that it needs to better document sole source justifications for contracts should improve the Corporation procedures for contracts as well. However, better documentation alone will not resolve all of the contract issues we reported. CPB must also improve its oversight of awards to ensure better compliance with the procurement policy.

Our evaluation of CPB's response by procurement follows:

Contracts #13871 and #138712 (Ready to Learn)

It appears that the proposed rulemaking announced by DOE on December 14, 2012, is intended to address the problem encountered by CPB for these contracts by exempting applicants from conducting full and open competition related to partners, if they meet certain criteria. Hopefully CPB can meet the exemption criteria for future grants requiring pre-selection of partners.

Contract #14516 (CPB Annual Report)

CPB's response contends the award of the contract #14516 for its 2011 annual report was justified because the 2005-2007 contracts were competitive and yielded a similar result each year. For this reason, CPB contends that was beyond doubt the same vendor would have been best suited to continue production of subsequent reports. We disagree that the competitive award of the 2007 contract justifies the subsequent sole source awards over the next four years. Our review of the five scoring (evaluations) factors used in the 2007 RFP, found that the cost factor was not used to evaluate the proposals. Further, there was no documentation of the weights assigned to each of the factors when the RFP was issued. Had these anomalies been addressed during the 2007 award, it appears that another contractor may have had a better overall score and won the award.

Contract #14485 (SABS/SAS Management)

CPB contends that contract #14485 for its 2011 management of SABS needed to be sole source because several previously competed SABS contracts yielded only one contractor. However, the CPB's procurement files for the "competitively" awarded 2010 SABS contract also had questionable evaluation practices associated with reviewing the proposals received. In this case the successful bidder was allowed to refine its deliverables, which raises questions whether the process was equitable and the subsequent 2011 sole source award was adequately justified based on the 2010 competitive award.

Contract #14374 (Communications Strategies)

CPB's response for contract #14374 explains that this sole source award was a justified emergency because the communications and branding strategy was central to the American Graduate Initiative, and much of the work had to be done before system meetings in August and CPB Board meetings in September and November 2011. While CPB's poor planning and inaction created an emergency, it was not unforeseen, and as such this sole source award was not in compliance with the Procurement Policy. CPB should have planned its work processes better and begun the procurement process sooner, thereby avoiding this sole source procurement. Likewise, we do not agree that the Website redesign was an unforeseen emergency.

Contracts #14067 and #13914 (Preparing FCC and Congressional Hearing Comments)

We disagree that piggy backing "routine services" onto emergency sole source contracts makes good business sense and does not contradict CPB's procurement policy. We also disagree that the added services for contracts #14067 and #13914 represent a logical continuation of the underlying work. While the services added to each contract were of a similar nature, the added services were not an emergency that merited paying a premium. GAO reports show that sole source contracting is more expensive than competed contracts. As a result, CPB paid a premium for non-emergency work by including it as an add-on to an emergency contract. CPB could have avoided the premium associated with these piggy-

backed tasks by posting an RFP on its web site for 10 days and awarding a competitive contract for the non-emergency work.

* * * * *

Generally, we found that better planning of upcoming program needs could have avoided a number of the sole source procurements evaluated in our sample. This would have included the CPB Annual Report, the SABS/SAS Management, and the Communications Strategies procurements.

Accurately Classifying Procurements in GIFTS

CPB’s records did not accurately record the use of sole source contracting in GIFTS. The initial GIFTS information provided to us showed that there were 126 sole source awards (contracts) for the period of our review (October 1, 2009 through April 1, 2012). Subsequently, CPB personnel indicated that they did not believe there were that many sole source contracts awarded during our review period. They explained that as a result of a previous OIG audit in 2005, CPB began providing reports to its Board that identified consulting contracts that were procured sole source and the reasons for using sole source. They had reported 41 sole source consulting procurements during our review period.

As a result, we reviewed the GIFTS procurement classifications and identified that only 60 contracts were awarded on a sole source basis as detailed in the following table.

CPB Adjusted Contracts Awards

<i>Method</i>	<i>Number of Awards</i>	<i>Percent of Total Awards</i>	<i>Dollar Value of Contracts</i>	<i>Percent of Total Dollars</i>
Competitive	277	82	\$39,988,000	68
Sole Source	60	18	\$19,217,000	32
<i>Totals</i>	<i>337</i>	<i>100</i>	<i>\$59,205,000</i>	<i>100</i>

Our review disclosed that the difference between the 60 sole source contracts and the 41 contracts reported to the Board were 19 non-consulting contracts. The 66 contract difference between the 126 sole source contracts listed in GIFTS and the 60 identified by CPB management were contracts that project officers had mistakenly classified as sole source procurements.

Based on the sample of 19 contracts, we found that the reconstructed 60 sole source contracts may not be completely accurate either. As the following table demonstrates our sample was taken from the procurement classification in GIFTS. After auditing the procurements we classified them according to what we found (i.e., competitive contract, sole source contract or grant) as presented in the following table. This included reclassifying

some of the sole source procurements to other categories and visa versa, but these reclassifications did not change the total number of sole source procurements in our sample. Based on this small sample we could not project what the actual composition of the universe is by type of procurement.

Reclassification of Audited Procurements

<i>Method</i>	<i>Original Sample</i>	<i>Percent</i>	<i>After Audit</i>	<i>Percent</i>
Competitive	8	30	6	22
Sole Source	13	48	13	48
Blank (grant) ¹	6	22	8	30
Totals	27	100	27	100

It appears that CPB’s methodology for classifying grants and contracts in GIFTS caused the inaccurate reporting. Section 4 of the *Project Officer Handbook* provides that CPB use the term “contract” to refer to both grants and contracts (purchase agreements). Section 5 of this same reference requires project officers to document the procurement method (sole source or competitive) only for projects *without* media content (contracts). Projects *with* media content (grants) are not subject to the CPB procurement policy. Consequently, the *Handbook* instructs project officers *not* to specify a procurement method for grants.

Adding to the confusion is that grants can be solicited via an RFP (competitive), a directed solicitation to a limited number of vendors (limited competition), or initiated from an unsolicited proposal (sole source). The grants mislabeled as competitive in our sample were generally awarded via an RFP and the grants mislabeled as sole source in GIFTS were often awarded without an RFP. Classifying grants as grants instead of contracts would clarify reporting, especially in GIFTS and on concurrence forms. This more precise classification of grants would also help ensure sole source contracts are correctly classified in GIFTS.

¹ Section 5 of the *Project Officer Handbook* requires that projects with media content (grants) should not indicate a procurement type, i.e., sole source or competitive, but this information should be left blank.

Recommendations:

- 2) We recommend that CPB revise its policies and procedures to improve recording of contracts and grants awards in GIFTS by:
 - a) Identifying awards as a grant or a contract rather than classifying both grants and contracts as contracts. This change will enable project officers to more easily determine which policies and procedures are applicable and accurately report the type of award being completed i.e., sole source or competitive contracts as well as sole source and competitive grants in GIFTS and on concurrence forms.
 - b) Revise the CPB Concurrence Form to require project officers to specify the type of award (competitive or sole source) for all grants, including those with media content, to identify grants that should be competed in accordance with the requirements of the Public Broadcasting Act.
 - c) Ensure GIFTS accurately describes procurements as grants or contracts (sole source or competitive) to provide accountability over all procurement activities and permit oversight of sole source contracting activities, as well as ensure production grants are reviewed by outside panels in accordance with the requirements of the Public Broadcasting Act.

CPB Management Response:

CPB's response stated that the draft report critiques the adequacy of information in the Grants Information and Financial Tracking System (GIFTS) and suggests that GIFTS should be modified to alert project officers to the policies and procedures applicable to each project and "to provide accountability over all procurement activities and permit oversight of sole source contracting activities, as well as ensure production grants are reviewed by outside panels...."

CPB's response explained that it relies on its accounting system, Great Plains, to track financial data, and the Concurrence Request System (CRS) to review and track detailed approvals of each project, and it is these records that are suitable for audit purposes. GIFTS cannot serve as the system of record for auditable procurement and grant information because it does not necessarily maintain the data as it was when approved because data in GIFTS changes over time. Since multiple people may modify GIFTS data, including project officers who often change and update data to manage and maintain project activity records, the information maintained is not necessarily the same as it was when the project was approved. GIFTS may not always match the payment records in Great Plains that CPB always relies on as the true record, since it has auditable documentation and processes with checks and balances when data is recorded. Data pertaining to sole source or emergency procurement determinations is first entered into the CRS; though it may be later transferred to GIFTS, CRS is the reliable audit source. Finally, concurrence forms do

not always note whether a project is a grant or otherwise, and that is not always a project officer decision.

Accordingly, CPB said that it cannot use GIFTS as the system of record to track this information. CPB also stated that it will consider revising the procurement section of the concurrence form to indicate whether a project is a grant or a contract, and (a) if it is a contract, how it was procured, or (b) if it is a grant, whether it contains media content, and if so whether it was reviewed by panel or why it was not. CPB may also consider documenting the source of a grant proposal (whether solicited or not) on the form.

OIG Review and Comment:

CPB's proposed actions meet the intent of 2a and b and should improve CPB's ability to manage its awards. We consider these recommendations resolved but open pending CPB's corrective actions to revise the concurrence form. Recommendation 2c is considered unresolved and open pending CPB's final management decision during audit resolution.

Although CPB's response regarding the changing nature of GIFTS information and the inadequacies associated with using GIFTS data as a system of record is understandable for most of the information discussed. However, we still believe it would be beneficial if, at the time of award, GIFTS were annotated to indicate whether the award was a grant or a contract and if it was sole source or competitive. There should be no need for this data to change after the award and this information would be helpful for monitoring sole source procurements.

SCOPE AND METHODOLOGY

We performed our evaluation in accordance with the CIGIE *Quality Standards for Inspection and Evaluation*, dated January 2012. We performed our evaluation field work during the period May through October 2012.

The scope of our work included tests of grants and contracts awarded from October 1, 2009 through April 1, 2012. We judgmentally selected 27 of 745 contracts and grants recorded in GIFTS, per Exhibit B. Our sample included 13 sole source procurements to address the allegation of favoritism in awarding grants and contracts. We also reviewed GIFTS to identify previous grants and contracts awarded to the grantees and contractors included in our sampled grants and contracts to identify any patterns in awards to specific grantees or contractors. We were unable to identify the source or sources of the allegation to discuss with them the specific contracts or grants referenced in their complaint. The balance of our sample included 3 competitive contracts, 3 directed contracts, and 8 grant awards.

In conducting our evaluation, we reviewed CPB's grant and contract files maintained by its Office of Business Affairs, and CPB project officers, as well as information in GIFTS for each of the 27 projects included in our sample. For the projects in our sample that made use of digital funds, we assured such use was consistent with the appropriation. We reviewed CPB policies and procedures applicable to the solicitation, award, administration and management of grants and contracts. We also discussed our results with CPB management and the project officers assigned to the projects reviewed. We also discussed the award procedures for contracts and grants with CPB officials from the General Counsel's Office and the Chief Financial Officer's Office.

We gained an understanding of CPB'S internal controls over the procurement of contracts and grants by reviewing CPB's Procurement and Contracts policies, the Project Officer Handbook, CPB's deobligation and amendment policies, the guidance for CPB's Concurrence Request System (CRS), and its Grants Information and Financial Tracking System (GIFTS).

Analysis of Procurement Types

CPB Awards Recorded in GIFTS by Fiscal Year
For the period October 1, 2009 through April 1, 2012

Fiscal Year	Competitive	Sole Source*	No Description (Grants)**	Total Awards
2010	82	29	205	\$167,459,000
2011	148	24	184	204,235,000
2012***	47	7	19	17,042,000
Totals	277	60	408	\$388,736,000

* Sole source total recalculated by CPB management.

** Awards without description were generally grants, i.e., production, digital conversion, or My Source, etc.

*** FY 2012 dollar amounts are for a partial fiscal year.

CPB Awards by Procurement Method
For the Period October 1, 2009 through April 1, 2012

Method	Number	Amount
Competitive Contracts	277	\$39,988,000
Sole Source Contracts	60	\$19,217,000
No Description (Grants)	408	\$329,511,000
Total	745	\$388,736,000

Exhibit C

Evaluation Results

Agreement #	Agreement Amount	Type of Procurement	Compliant with Policy/Act	Non-complaint with Policy/Act	Explanation of Non-compliance
Contracts:					
13760	\$214,950	competitive	x		
14419	\$24,475	competitive	x		
14478	\$120,000	competitive	x		
13565	\$65,000	limited competition	x		
14269	\$35,000	limited competition	x		
14540	\$520,000	limited competition	x		
13914	\$70,500	sole source		x	emergency not adequately justified
14434	\$146,918	sole source	x		
13871	\$9,997,242	sole source		x	only contractor practically available not adequately justified
13872	\$4,959,677	sole source		x	only contractor practically available not adequately justified
13940	\$30,111	sole source		x	only contractor practically available not adequately justified
13974	\$27,914	sole source		x	emergency not adequately justified
14067	\$240,000	sole source		x	emergency not adequately justified
14199	\$25,000	sole source	x		
14374	\$50,000	sole source		x	emergency not adequately justified
14439	\$114,000	sole source		x	only contractor practically available not adequately justified
14485	\$185,000	sole source		x	only contractor practically available not adequately justified
14516	\$79,950	sole source		x	only contractor practically available not adequately justified
14542	\$12,000	sole source	x		
Grants:					
13976*	\$300,000	unsolicited	x		
14141*	\$31,500	competitive	x		
13375	\$1,999,160	unsolicited		x	proposal not reviewed by outside/inside panel
13874	\$1,000,000	unsolicited		x	proposal not reviewed by outside/inside panel
13938	\$247,612	unsolicited		x	proposal not reviewed by inside panel
14072	\$1,250,000	unsolicited		x	proposal not reviewed by outside/inside panel
14554	\$75,000	unsolicited		x	proposal not reviewed by inside panel
13766**	\$662,500	unsolicited	x		

* not a programming grant

** programming grant with an outside panel review



Corporation
for Public
Broadcasting

Exhibit D

J. Westwood Smithers, Jr.
Senior Vice President and
General Counsel

March 7, 2013

MEMORANDUM

To: William J. Richardson, III
Deputy Inspector General

From: J. Westwood Smithers, Jr.
General Counsel

Re: Evaluation of CPB Procurement Awards for the Period
October 1, 2009 – April 1, 2012

Management of the Corporation for Public Broadcasting appreciates the opportunity to comment on your January 22, 2013 draft evaluation of selected CPB procurement awards from October 2009 to April 2012. Management concurs generally with the findings and recommendations in this report with respect to improved documentation of procurement decisions, particularly in cases of sole source or emergency determinations. Although we agree that more detailed documentation could have better memorialized the sole source or emergency justification for some of the procurements highlighted in the report, as explained below Management believes that they were justified and appropriate under CPB policy, provided good value to CPB, and represented a reasonable exercise of business discretion in the factual context of each decision. Management also believes that content-related grants, which are not subject to the procurement policy and its RFP process, could have been better documented to confirm that review by external panels was not practicable under the circumstances, consistent with the Communications Act.

The report implies that CPB grants for media content should be awarded and documented in a fashion similar to the award of consulting and other contracts under the procurement policy. This is apparently based on a reading of the Project Officers Handbook and CPB's concurrence forms which relate to but do not govern the formal procurement process. The Handbook encourages use of a competitive process to award grants, and the concurrence process questions the manner in which a grant or contract was procured. Yet the procurement policy, which alone governs how goods and services shall be purchased, clearly exempts content-related

grants from the RFP process. Likewise, procurement-related questions in the concurrence form are relevant (and thus require answers) only for projects subject to the procurement policy, which does not include content-related grants. Admittedly, the distinction between “grants” and “contracts” causes some confusion, if only because every CPB grant is, *per se*, a contract. Management will clarify its operating procedures and guidance, and we have already modified the Project Officers Handbook to avoid any inference that it somehow supersedes CPB’s procurement and contracting policies.

The report critiques selected contracts that CPB awarded on the basis of sole source or emergency determinations, the two exceptions to the policy’s general requirement for open competition. Most were sole source contracts, for which the policy requires “a written determination that there is only one vendor practicably available for that which is to be procured....” The key phrase, “practicably available,” does not mean that the vendor selected must be unique, or that there is no possibility that another vendor could perform the contract. In a procurement context, “practicably available” simply means that there is a *reasonable expectation* that there is only one vendor, or that open competition would not yield a different result.¹

Following is a brief explanation of the procurements and other issues discussed in the report.

Contracts #13871 and #13872 (Ready to Learn Research)

These contracts were for \$15 Million in research services for a \$72 Million Ready to Learn (RTL) Grant that CPB, in collaboration with PBS, won from Department of Education (DOE) for pre-school children’s programming and related educational services. DOE’s grant notice, issued on March 22, 2010, required applicants to submit proposals by May 20, 2010, a two month window that was later extended by 30 days. Research measuring the effectiveness of RTL programs was an important factor in DOE’s evaluation of proposals, so applicants needed to name those who would do the research and describe their experience and qualifications.

CPB and PBS selected the same firms for these research contracts that had partnered with them in the previous RTL grant round, had done the same kinds of research, and had won high marks from DOE for their work. Of course, other firms might have been able to conduct research, but there was no reasonable expectation that others might (a) do it better or, (b) better help CPB win the grant based on the firms’ reputation with DOE. Moreover, CPB was in a “Catch 22” situation where it had to name vendors in a grant application before it had any

¹ “Practicable” applies to “something immaterial (as a plan, expedient or design) which has not been tested in practice or to something material (as a machine or implement) that has not been proved in service or use; the term implies expectation rather than assurance of successful testing or proving.” Webster’s New Collegiate Dictionary (1975) “practicable” p. 902.

assurance of a grant to fund their contracts.² A formal pre-grant procurement (even if time permitted, which in this case it did not) would, therefore, have been hypothetical with no assurance of a grant to fund the vendors' contracts until long after proposals were submitted. Likewise, a post-grant procurement would have been disingenuous because the firms had already been named, as required, in the grant application.

For all of those reasons, CPB's written justification, that the selection of alternative firms through an RFP was "highly unlikely," reflects the reasonable and practicable expectation of what would happen. This is precisely the kind of justification that the procurement policy requires to support a sole source decision.

Contract #14516 (CPB Annual Report)

This 2012 contract, which was for the production of the FY 2011 annual report, was one in a continuum of efforts since 2005 to reform and improve the content, format, image and overall effectiveness of CPB's annual report which has been online and not printable since 2008. The sole source vendor selected to do the 2011 report was competitively selected by RFP to produce previous reports in 2005, 2006 and 2007. Those competitive procurements were followed by a three-year sole source contract to continue production in 2008-2010. The 2012 sole source contract was awarded for a single year, in anticipation of a comprehensive redesign and replacement of CPB's website where the annual report now resides.

This sequence of competitive and sole source contracts is normal in the evolution of a graphic production from print to multimedia online. It ensures continuity of appearance, quality, and software compatibility, all of which are important to CPB's single most visible and defining public communication. After competitively selecting the same vendor for 2005-2007, absent a significant change in the report's direction it was practicably beyond doubt that the same vendor was best suited to continue production, at least for the near term. As with other procurements addressed in the report, these supporting facts may not have been as well-documented as possible, but they certainly sustain the sole source determination for the most recent production effort. Moreover, the cost of these services remained reasonable and consistent since the last competitive procurement, confirming that CPB was not financially prejudiced by continuing to use the same firm.

² The report mentions DOE's EDGAR requirement to competitively select or otherwise document the selection of vendors after a grant is awarded, even if the vendor's service is part of the grant application. CPB's decision not to do so was not sanctioned by DOE. On December 14, 2012, DOE announced a rulemaking that would amend EDGAR to enable selection of partner firms without formal post-award competitive procurements.

Contract #14485 (SABS/SAS Management)

As the report observes, the sole source award of this 2011 contract for management of CPB's SABS/SAS information systems was based on the vendor's unique qualifications gained over seven years of doing the same work. As the concurrence stated, "the technical components and the procedures required to launch and administer surveys are known only to [the incumbent contractor]." Since the only CPB employee familiar with SABS/SAS management departed in June 2011, CPB has had no practicable alternative to using the incumbent vendor to manage the systems and guide stations in submitting the data they require. By periodically competing this contract through RFPs, CPB has confirmed that the incumbent is the only vendor practicably available. While another vendor could be trained to assume the work, CPB would have to retain the incumbent to train the replacement.

As found in the report, CPB has incorrectly characterized some awards to the incumbent as "emergency" procurements when, in fact, it was known sufficiently in advance that services the same vendor's services would have to be continued on a sole source basis. That obviously occurred here, yet the contract still warranted sole source renewal. With respect to reasonableness of the vendor's price, there should be little concern with this contract because the \$185,000 annual cost is less than it would cost CPB to perform the work with its own employees.

Contract #14374 (Communications Strategies)

This contract was for assistance in communications and marketing strategy, messaging and branding essential to CPB's management of the highly successful American Graduate Initiative. This initiative to stem high school dropout rates won the interest of public media stations so rapidly that it became necessary for CPB to "catch up" with what it had conceived following its official launch at the Newseum in May 2011. CPB needed to refine the initiative's messaging and outreach components to ensure that it would effectively influence outcomes in station communities. Communications and branding strategy was central to that effort, and much of the work had to be done before system meetings in August and CPB Board meetings in September and November 2011. This required someone familiar with CPB, public media and their interrelationships with elementary and secondary education. It also required an experienced and accomplished vendor.

The vendor selected in late July possessed the required qualifications as an award-winning communications, branding and marketing professional, and as a former CPB employee who required no learning curve and could begin work immediately. Under the circumstances, this \$20,000 contract qualified for a noncompetitive award under both sole source and emergency criteria. The subsequent amendment of the contract to perform related website design was a continuation of the same work, which equally qualified the incumbent as the only source

“practicably” available. Admittedly, the basis for these decisions could and should have been better documented. Likewise, the failure to obtain COO approval on the concurrence form was an oversight.

Contracts # 14067 and #13914 (Preparing FCC and Congressional Hearing Comments)

The report criticizes procurements of “routine services” that were “piggy-backed” onto sole source or emergency contracts. Management agrees that it would be inappropriate if CPB had subsequently contracted with the same vendor for additional services unrelated to the initial procurement. Where, however, the added services represent a logical continuation of the underlying work for which the vendor was selected, so-called “piggy-backing” makes good business sense and does not contradict CPB’s procurement policy. It represents a fair and efficient practice as long as the subsequent contract amendments do not represent a new or separate project outside of the scope of expertise for which the vendor was first selected.

Contract #14067 was for research to assist with CPB’s response to a congressional inquiry on alternative sources of funding for public media. There was an emergency because Congress had scheduled a hearing on the issue too soon for CPB to use the RFP process. CPB had previously conducted similar research, and its selection of the vendor for this work was based on its evaluation of the limited number of qualified firms familiar with public media and capable of doing the work without delay. Although the hearing was unexpectedly cancelled, CPB was still required to submit a written report to Congress on the same issue, and in a compressed time frame. Under the circumstances, it made no sense to postpone the work and issue an RFP because it was obvious that the same vendor would be chosen.

Contract #13914 was an emergency procurement to survey public media stations through “dynamic inquiries” for CPB’s response to a proposed FCC spectrum rulemaking, notice of which was too short to permit the RFP process. In addition to the initial survey, CPB needed follow-up inquiries to the stations. While it may have been possible to do a separate procurement for the subsequent survey, it would not have been at all *practicable* because of the vendor’s knowledge of the issues, survey methodologies and contacts with subjects of the initial survey. The additional work, therefore, qualified as sole source under the policy.

Review Panels for Production Grants

With respect to your discussion of using outside panels to review production grants, we agree with the central point of your finding that provisions of the Communications Act requiring review of programming grant proposals “to the extent practicable” by external panels (§396(g)(2)(B)) and for public disclosure of information on grant guidelines and the selection of

recipients (§396(l)(4)(B)) apply to radio as well as television grants. This is an oversight in our grant-making process that we will correct. We do not, however, agree with your conclusion that the Act requires CPB to “solicit proposals and have panels of outside experts evaluate the proposals received against the criteria formulated to solicit proposals.” The Act does not so provide, and production grants, as noted earlier, are not subject to the procurement policy. Such competitive selection criteria are mentioned only as guidance in the Project Officer’s Handbook. Again, the Handbook is not controlling, and its provisions should and will be clarified to avoid confusion with the Act and CPB policy. It is also important to note that most CPB production grants are *unsolicited*, consistent with our practice of relying on producing stations, not CPB staff, to propose public media content.

Classifying Procurements in GIFTS

Finally, the draft report critiques the adequacy of information in the Grants Information and Financial Tracking System (GIFTS) which CPB uses to track certain grant, contract and other financial information. It suggests that GIFTS should be modified to alert project officers to the policies and procedures applicable to each project and “to provide accountability over all procurement activities and permit oversight of sole source contracting activities, as well as ensure production grants are reviewed by outside panels....”

GIFTS is an off-the-shelf database management system that CPB acquired nearly 10 years ago. It is but one element of a multi-part record-keeping system, and it is limited in the nature and scope of information it tracks. GIFTS is neither intended nor designed to be CPB’s official “system of record” for all financial, grant-making and procurement activities.

CPB relies on its accounting system, Great Plains, to track all financial data including payment information. CPB also uses the Concurrence Request System (CRS), a customized Access database tool, to review and track detailed approvals of each project. Once a project is approved, a PDF of the concurrence form documents the details of the information approved, including comments by the reviewers, giving CPB an accurate record of each approval. CPB maintains the Great Plains and CRS records for review and audit purposes with respect to project approvals and payments, including procurement information, and it is these records that are suitable for audit purposes.

GIFTS cannot serve as the system of record for auditable procurement and grant information for several reasons:

- GIFTS does not necessarily maintain the data as it was when approved because data in GIFTS is dynamic and may shift and change over time, creating uncertainty as to its integrity. Multiple people may modify GIFTS data, including project officers who often change and update data to manage and maintain project activity records, so the

information maintained is not necessarily the same as it was when the project was approved.

- GIFTS may not always match the payment records CPB considers to be accurate because, at times, GIFTS and Great Plains are out of sync. CPB always relies on Great Plains data as the true record, since it has auditable documentation and processes with checks and balances when data is recorded. No payments are actually made by CPB in reliance on GIFTS.
- Data pertaining to sole source or emergency procurement determinations is first entered into the CRS; though it may be later transferred to GIFTS, CRS is the reliable audit source.
- Concurrence forms do not always note whether a project is a grant or otherwise, and that is not always a project officer decision.

Accordingly, we cannot use GIFTS as the system of record to track this information. We will consider revising the procurement section of the concurrence form to indicate whether a project is a grant or a contract, and (a) if it is a contract, how it was procured, or (b) if it is a grant, whether it contains media content, and if so whether it was reviewed by panel or why it was not. CPB may also consider documenting the source of a grant proposal (whether solicited or not) on the form.

I trust that you will find the foregoing information useful in resolving the findings and recommendations in this evaluation of CPB procurements and related matters. As always, I will be happy to answer any questions you may have and to discuss the issues further at your convenience.

C: Pat Harrison
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