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Office of Inspector General
United States Department of State

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Office of Evaluations and Special Projects

August 2022

Review of the U.S. Agency for Global Media's Contract with McGuireWoods

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HIGHLIGHTS

Office of Inspector General
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What OIG Reviewed

In response to whistleblower complaints, Congressional inquiries, and a referral from the Office of Special Counsel, OIG reviewed a contract for investigative and legal services that was signed by McGuireWoods and the former Chief Executive Officer of USAGM.

What OIG Recommends

OIG made two recommendations to USAGM's Office of Contracts to amend its special procurement policies: (1) to include a clause in contracts to require contractors to cooperate with OIG to provide access to relevant documents and personnel, and (2) to assign a contracting officer to all contracts.

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What OIG Found

The Office of Inspector General (OIG) found that in August 2020, the U.S. Agency for Global Media (USAGM) signed a contract with McGuireWoods, a U.S.-based international law firm, for legal and investigative services. USAGM used a special statutory authority to exempt the contract from federal rules governing procurement, such as those requiring competition and cooperation with OIG. However, USAGM did not follow the procedures laid out in its internal policies for use of the procurement exemption.

Concerns were also raised as to whether the contract with McGuireWoods violated the Anti-Deficiency Act because of the requirement to reimburse the firm for all fees and expenses. OIG found that the contract did not violate the Act because it had a ceiling on the agency's liability. However, USAGM did not properly record its obligations related to the contract in its financial accounting system because McGuireWoods did not notify it that it had exceeded the initial ceiling.

USAGM expended more than \$1.6 million under the contract, primarily for misconduct investigations of several employees. USAGM's then Chief Executive Officer (CEO) did not assign a contracting officer to oversee the contract. A senior advisor to the CEO served as the de facto contracting officer but did not exercise the same level of oversight as a contracting officer.

Although OIG found no evidence that McGuireWoods billed for anything other than work it performed at USAGM's request, it did find that some of the items requested by USAGM constituted waste, because they were duplicative of existing resources and involved the payment of billable hours far in excess of the salary of federal employees who can perform the same work.

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BACKGROUND

In January 2021, the Office of Inspector General (OIG) received a whistleblower complaint that alleged that the U.S. Agency for Global Media (USAGM) spent at least \$2 million for a contract with the law firm McGuireWoods to conduct a variety of legal and investigative work. The complaint alleged that this expenditure constituted “a gross waste of government resources.” The same complaint was also sent to the Office of Special Counsel (OSC), which made a referral under 5 U.S.C. § 1213, directing USAGM to investigate the matter.¹ On February 18, 2021, USAGM requested that OIG review the allegations. In addition, in January 2021, OIG received a separate whistleblower complaint that USAGM had violated the Anti-Deficiency Act by not including in the contract with McGuireWoods a limitation on the agency’s liability under the contract.² OIG also received several Congressional inquiries about the contract, including questions as to whether USAGM used proper procedures to execute it.

In February 2021, OIG began preliminary work, which included a review of copies of the contract and invoices from McGuireWoods. During this work, OIG found that USAGM used a legal authority granted to it by statute to exempt the contract from federal procurement laws, including those requiring competition in contracting.³ OIG also reviewed a copy of the contract, which listed the hourly billing rates of several of McGuireWoods attorneys (ranging from \$550 to \$850),⁴ included a general description of the work to be performed (“to conduct an internal investigation on behalf of USAGM regarding the complaints of potential misconduct by employees”), and required monthly reimbursement of all fees and expenses, but did not provide more details about the scope, timing, or length of the work to be provided. OIG’s preliminary work raised significant questions about the contract, the expenditure of federal funds, and the work produced by McGuireWoods. Therefore, it opened a special review of the matter in July 2021.

As part of this review, OIG requested documents from McGuireWoods and requested to speak with personnel who performed work on the contract. OIG spent over 4 months working with USAGM and counsel for McGuireWoods to obtain the documents and to arrange to speak with McGuireWoods personnel. Unlike other government contracts, which require cooperation with

¹ Under 5 U.S.C. § 1213, when OSC receives information and determines that there is a “substantial likelihood that the information discloses a violation of any law, rule, or regulation, or gross mismanagement, gross waste of funds, abuse of authority, or substantial and specific danger to public health and safety,” it must transmit the information to the relevant agency and direct it to investigate the matter.

² 31 U.S.C. § 1341(a)(1). The Anti-Deficiency Act prohibits a federal official from entering into an obligation in excess of funds currently appropriated for the obligation.

³ 22 U.S.C. § 6204(a)(10). This provision authorizes the Chief Executive Officer of USAGM to “procure, rent, or lease supplies, services, and other property for journalism, media, production, and broadcasting, and related support services, notwithstanding any other provision of law relating to such acquisition, rental, or lease.”

⁴ The invoices received from McGuireWoods included hours billed by one attorney whose billing rate (\$930) was higher than those listed and numerous attorneys with rates lower than those listed.

OIG,⁵ the contract with McGuireWoods did not explicitly require such cooperation.⁶ Therefore, OIG was unable to compel McGuireWoods to allow OIG access to its records or personnel through the terms of the contract. Ultimately, OIG was able to obtain a copy of the client file directly from USAGM, and counsel for McGuireWoods answered some questions about the invoices. These access issues significantly delayed the issuance of this report.

RELEVANT LAWS AND POLICIES

USAGM Procurement Authority

The Chief Executive Officer of USAGM is authorized to “procure, rent, or lease supplies, services, and other property for journalism, media, production, and broadcasting, and related support services, notwithstanding any other provision of law relating to such acquisition, rental, or lease.”⁷ Congress added this authority in 2016, but there is scant legislative history of this provision. The Conference Report simply notes that it was to “provide certain new flexibilities in the [USAGM] CEO's authorities.”⁸

USAGM has an internal directive that provides guidance for contracts signed under this authority, which it refers to as FAR-Exempt Special Agreements or FESAs.⁹ The directive interpreted the authority to exempt contracts signed pursuant to it from the Competition in Contracting Act and the Federal Acquisition Regulation (FAR).¹⁰ This interpretation is in accord with the Government Accountability Office (GAO), which has interpreted similar language to grant an agency a broad exemption from procurement laws.¹¹

The directive states that when executing a contract pursuant to the directive, the contracting officer shall “disregard the policies, procedures, and guidance provided by the FAR” with regard to registration of contractors in the System for Award Management (SAM), the publication of

⁵ 41 U.S.C. § 4706(c). Beginning in January 2022, Department of State contracts must include a provision in the contract requiring cooperation with OIG. 48 C.F.R. § 652.215–70.

⁶ USAGM officials told OIG that contracts signed under its special procurement authority generally include the standard FAR clauses that grant an agency and its OIG such access rights. USAGM’s directive on FAR-exempt contracts instructs the contracting officer to disregard provisions of the FAR related to registration, publication, and competition, but that “other provisions of the FAR, such as requirements for acquisition planning, market research, contract clauses, and complete contract file documentation, shall continue to apply” as determined by the contracting officer. However, in this case, the then-CEO did not assign a contracting officer, so no such determination was made. These standards clauses were not included in the McGuireWoods contract.

⁷ 22 U.S.C. § 6204(a)(10).

⁸ H. Rep. No. 114-480, at 1209 (Nov. 30, 2016).

⁹ USAGM, Directive Memo: Awarding Federal Acquisition Regulation (FAR) Exempt Special Agreements (Aug. 6, 2019).

¹⁰ The directive states, “Where Congress has authorized a government agency to procure, rent or lease supplies, services, and other property ‘notwithstanding any other provision of law relating to such acquisition, rental or lease’, those transactions, by their nature, are not subject to the FAR, or to other procurement-related laws, such as the requirement for contractors to register in the SAM, or CICA.”

¹¹ See, e.g., B-226968 (July 29, 1987)

proposed contract actions, competition requirements, and “any other FAR provisions that require SAM registration, competition, synopsis and publicizing, or other methods of public notice.” The directive also states that “other provisions of the FAR, such as requirements for acquisition planning, market research, contract clauses, and complete contract file documentation, shall continue to apply according to the facts and circumstances of each contract” as determined by the contracting officer. USAGM’s directive lists nine categories of contracts that may be executed under the authority, including:

- Frequency license contracts
- Operation and maintenance contracts with foreign commercial entities
- Affiliate agreements with foreign media platforms
- Individual broadcaster contracts and agreements
- Acquired programming content contracts
- Foreign real property leases
- Other contracts, leases, or agreements with foreign states
- Contracts “dealing with sensitive or security concerns relating to individual safety, protection of sources, or broadcast operability.”¹²
- Any other contract determined by USAGM’s Senior Procurement Executive to be a FESA.

The Anti-Deficiency Act

As stated above, one of the allegations that OIG investigated was whether USAGM violated the Anti-Deficiency Act.¹³ The Anti-Deficiency Act is one of the major fiscal laws in the statutory scheme by which Congress exercises its constitutional control of the public purse.¹⁴ Among other things, the Act prohibits a federal official from entering into an obligation or making an expenditure in advance or in excess of funds currently appropriated for the obligation.¹⁵ Both the Supreme Court and GAO have long held that contracts in which the amount of the government’s liability is indefinite, indeterminate, or potentially unlimited violate the Act.¹⁶ Thus, an agency must place a ceiling on its liability in a contract in order to comply with the Act.

The concept of an obligation is central to compliance with the Anti-Deficiency Act. An obligation is generally defined as “A definite commitment that creates a legal liability of the government

¹² USAGM’s Senior Procurement Executive told OIG that this category is typically used to contract with foreign journalists whose safety could be jeopardized by registering in the System for Award Management.

¹³ 31 U.S.C. §§ 1341, 1342, 1517.

¹⁴ GAO, *Principles of Federal Appropriations Law*, at 6-34 (3rd ed. 2006).

¹⁵ 31 U.S.C. § 1341(a)(1). The Act also prohibits the acceptance of voluntary services and entering into an obligation or expenditure in advance or excess of an apportionment or an allotment.

¹⁶ *Hercules, Inc. v. U.S.*, 516 US 417, 427 (1996); GAO, *Principles of Federal Appropriations Law*, at 6-59 (3rd ed. 2006).

for the payment of goods and services ordered or received.”¹⁷ Once an agency incurs an obligation, such as placing an order under a variable quantity contract (such as the McGuireWoods contract), it must record the obligation in its financial accounting system.¹⁸ Under-recording (failing to record legitimate obligations) may result in violating the Anti-Deficiency Act.¹⁹

Waste

Although the term “gross waste” is included in federal whistleblower statutes, no federal statute defines the term.²⁰ However, the Merit Systems Protection Board (MSPB), which interprets these laws, has defined the term as a “more than debatable expenditure that is significantly out of proportion to the benefit reasonably expected to accrue to the government.”²¹

Federal auditing standards also include a definition of “waste” (as opposed to “gross waste”) as “the act of using or expending resources carelessly, extravagantly, or to no purpose.”²² These standards note that “waste relates primarily to mismanagement, inappropriate actions, and inadequate oversight.”

FINDINGS

This report reviews several issues related to the McGuireWoods contract, including the formation of the contract, compliance with relevant laws and regulations, expenditures under the contract, and whether any such expenditures constitute waste.

USAGM Exempted the McGuireWoods Contract From Federal Acquisition Laws But Did Not Follow the Proper Procedures in Doing So

As noted above, the Chief Executive Officer (CEO) of USAGM has the authority to exempt certain contracts for journalism, media, production, and broadcasting and related support services, from federal acquisition laws.²³ Former CEO Michael Pack signed the contract with McGuireWoods on August 26, 2020, which states that “As Chief Executive Officer of the U.S. Agency for Global Media (formerly known as the Broadcasting Board of Governors), I hereby exempt this retention agreement from any and all federal laws, regulations and orders related

¹⁷ GAO, *A Glossary of Terms Used in the Federal Budget Process* (GAO-05-734SP, September 2005).

¹⁸ 31 U.S.C. § 1501. GAO, *Principles of Federal Appropriations Law*, at 7-6 – 7-9, 7-21, 7-23-7-24 (3rd ed. 2006).

¹⁹ GAO, *Principles of Federal Appropriations Law*, at 7-6 (3rd ed. 2006).

²⁰ See, e.g., 5 U.S.C. § 2302(a)(1)(D)(ii); 41 U.S.C. § 4712(a)(1).

²¹ See, e.g., *Nafus v. Department of the Army*, 57 M.S.P.R. 386, 393 (1993).

²² GAO, *Government Auditing Standards* (GAO-21-368G, April 2021) § 6.21.

²³ 22 U.S.C. § 6204(a)(10).

to procurement or contracting, pursuant to the authority granted to me under 22 U.S.C. § 6204(a)(10), which I hereby interpret to authorize me to take this action.”

The former CEO appears to have relied on a memorandum drafted by a senior advisor and dated August 18, 2020, that concluded that the McGuireWoods contract could be executed pursuant to the authority in Section 6204(a)(10) as a “related support service.” The memorandum states that a procurement under the FAR “would take time and would involve paperwork and reporting requirements that are normally unacceptable to major law firms.” The Senior Advisor instead recommended that the agency use Section 6204(a)(10) authority. His memorandum noted: “typically these procurements focus around the nuts and bolts of broadcasting, such as property for transmitters or a frequency license . . . but there is nothing in the statute or internal policy that would limit use of this authority here.” The senior advisor was an attorney, and the memorandum was reviewed and forwarded to the CEO by the then-Vice President of Legal, Compliance, and Risk.

Nonetheless, USAGM did not follow the procedure laid out in its internal directive for utilizing the FAR-exempt authority.²⁴ The directive lays out several categories of contracts that the FAR-exempt authority can be used for, but none of these categories explicitly reference legal or investigative services, the object of the McGuireWoods contract. Therefore, the contract would have to fit in the final catch-all category of “any other contract determined by USAGM’s Senior Procurement Executive to be a FESA,” which requires submission of the contract to the Senior Procurement Executive and his approval.²⁵ However, neither the former CEO nor the senior advisor sought such a determination by USAGM’s Senior Procurement Executive, and thus did not follow the appropriate process in designating the McGuireWoods contract as a FAR-exempt agreement.

The McGuireWoods Contract Did Not Violate the Anti-Deficiency Act, but USAGM Failed to Properly Record its Obligations Under the Contract

The original contract that McGuireWoods sent to USAGM (termed an “engagement letter”) required USAGM to promptly pay all fees, costs, and expenses invoiced by McGuireWoods without limitation. If USAGM had signed this agreement, it would have violated the Anti-Deficiency Act, which, as noted above, prohibits federal officials from signing such an open-ended agreement.²⁶

On August 21, 2021, prior to USAGM signing the engagement letter, its career procurement officials reviewed the letter and noted that, as drafted, it would violate the Anti-Deficiency Act.

²⁴ USAGM, Directive Memo: Awarding Federal Acquisition Regulation (FAR) Exempt Special Agreements (Aug. 6, 2019).

²⁵ Every agency is required to designate a senior procurement executive “responsible for management direction of the procurement system of the executive agency, including implementation of the unique procurement policies, regulations, and standards of the executive agency.” 41 U.S.C. § 1702(c).

²⁶ 31 U.S.C. § 1341(a)(1)(A).

They recommended that the letter be modified to include a cap on the agency's liability. USAGM then requested that McGuireWoods modify the engagement letter to state: "USAGM's financial liability under this engagement is limited to the amount of funds presently allotted to the contract, which shall be at least \$250,000 when the contract commences. McGuireWoods agrees to furnish the services described herein provided that the value of such services does not exceed the amount of funds allotted to the contract." When the contract was signed, USAGM allotted \$250,000 to the contract, entering this as an obligation in its financial management system and thus capping its liability at this amount. This addition ensured that the contract did not violate the Anti-Deficiency Act.

The contract also required McGuireWoods to notify USAGM if McGuireWoods "project[ed] that the value of the services it will provide at USAGM's direction is at risk of exceeding the amount of funds available on the contract." USAGM's initial obligation of \$250,000 was sufficient to cover the first invoice from McGuireWoods (for \$32,396), which reduced available funds for the contract to \$217,604. Consequently, when the second invoice arrived (for approximately \$321,869), it was approximately \$104,000 over the amount obligated for the contract. USAGM contracting officials told OIG that they had to "scramble" to adjust the obligation in the system to allow for payment. According to USAGM contracting officials, McGuireWoods did not notify them when its fees exceeded the ceiling listed in the original contract prior to receipt of the invoice. The contract with McGuireWoods was a variable quantity contract, and in such contracts, GAO instructs agencies to record the required minimum when the contract is signed and then adjust the obligation as subsequent orders are placed (rather than wait for invoices).²⁷ However, McGuireWoods did not alert USAGM when its fees exceeded \$250,000, as it was required to do under the contract, and thus USAGM did not properly record its obligations, which put the agency at risk of not having sufficient funds to pay the invoice.

USAGM Expended Approximately \$1.6 Million for the McGuireWoods Contract

USAGM paid four invoices to McGuireWoods under the contract from August to December 2020, as shown in Table 1.

Table 1: Invoices Paid by USAGM to McGuireWoods

Date of Invoice	Amount
09/25/2020	\$32,396.50
10/19/2020	\$321,869.57
11/13/2020	\$687,814.20
12/07/2020	\$ 582,684.50
Total	\$1,624,764.77

Source: OIG-generated from USAGM invoices.

²⁷ GAO, *Principles of Federal Appropriations Law*, at 7-21 (3rd ed. 2006); Also see B-302358 (December 27, 2004).

These invoices totaled approximately \$1.6 million in attorney and other professional fees and expenses (such as travel and software licenses). The vast majority of the funds (99.5 percent) were for attorney fees, and the invoices have line items with general descriptions of the work associated with the hours billed. The hours billed and the total amounts charged by the 12 attorneys with the highest hourly rates are listed in Table 2.

Table 2: Total Hours and Amounts Billed by the Attorneys with the Highest Hourly Rates

Attorney Hourly Rate	Total Hours Billed	Total Amount Billed
\$930	39.2	\$36,456
\$850	37.5	\$31,875
\$810	153.5	\$124,335
\$780	199.9	\$155,922
\$780	95.1	\$74,178
\$730	134.5	\$98,185
\$680	116.3	\$79,084
\$625	4	\$2,500
\$590	314.3	\$185,437
\$550	189.5	\$104,225
\$550	262.9	\$144,595
\$545	128.2	\$69,869

Source: OIG-generated from USAGM invoices.

In January 2021, USAGM also paid an invoice for \$2,883.66 to KLDDiscovery, a vendor that McGuireWoods used for copying and scanning services. The senior advisor prepared a memo requesting payment “for services rendered for McGuireWoods,” noting that the invoice was “kept out” of McGuireWoods’ invoice, “as it was received later from the vendor.” The then-CEO approved payment of the invoice on January 4, 2021.

Finally, McGuireWoods directed USAGM to enter into an agreement with Consilio, an e-discovery firm that McGuireWoods planned to use to conduct its work for USAGM. On September 17, 2020, another advisor to the CEO and the Vice President for Strategy, Research, and Operations, signed a “statement of work” with Consilio, which agreed to pay for all of its fees and expenses for work “under the supervision and direction of McGuireWoods.” McGuireWoods was assigned as the entity to request and accept the services on behalf of USAGM. The Vice President for Strategy, Research, and Operations, a non-career senior executive, was not a contracting officer, did not hold a warrant, and thus made an unauthorized commitment in signing this agreement.²⁸ From October 2020 through March 2021, Consilio sent seven invoices to USAGM totaling \$138,965.50 in fees and expenses. Consistent with internal and external legal guidance recently received, USAGM is initiating required

²⁸ 48 C.F.R. § 1.602-3(a).

administrative actions to process the outstanding invoices. Nonetheless, the making of an unauthorized commitment and the delegation to a nongovernmental entity of the ability to request and accept services on behalf of the government are serious violations of federal law and regulation, increase the risk of fraud, waste, and abuse, and usually necessitate disciplinary action against the responsible party.²⁹

The Lack of a Contracting Officer and of Adequate Contracting Internal Controls Likely Contributed to the Substantial Sums USAGM Expended Under the McGuireWoods Contract

Contracting officers play a critical role in the administration of U.S. government contracting. They have the authority to enter into, administer, or terminate contracts and are responsible for ensuring performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the United States in its contractual relationships.³⁰ One of the most important duties of the contracting officer is to ensure that “sufficient funds are available for obligation.”³¹ Generally, only a contracting officer can bind the government.³²

The then-CEO did not assign a contracting officer to the McGuireWoods contract.³³ The senior advisor to the former CEO served as a de facto contracting officer and was the primary liaison to McGuireWoods, making most of the assignments to the firm. As such, the senior advisor assumed the authority to bind the government by directing work and approving invoices but did not assume the responsibilities of a contracting officer to ensure that sufficient funds were available for obligation and that funds were appropriately obligated.

The senior advisor tasked work to McGuireWoods through numerous emails and text messages sent during business and non-business hours, quickly accumulating the substantial amount of fees noted above. However, OIG found little evidence that the senior advisor ever inquired as to the time or cost of such work or demonstrated any attention to the cost to the government of these numerous assignments. While OIG found no evidence that McGuireWoods billed for anything other than work it performed at USAGM’s request, the number and scope of the senior advisor’s requests and the lack of any oversight by a true contracting officer likely contributed to the substantial costs incurred under the contract.

²⁹ See, e.g., OIG, *Audit of the Administration and Oversight of Fuel Contracts at U.S. Embassy Amman, Jordan* (AUD-MERO-18-33, March 2018); OIG, *Audit of Contracting Officers’ Exceeding Delegated Procurement Authority* (AUD/CG-12-26, March 2012). The Vice President for Strategy, Research, and Operations is no longer a USAGM employee and thus is not subject to disciplinary action.

³⁰ 48 C.F.R. §§ 1.602-1(a), 1.602-2.

³¹ 48 C.F.R. § 1.602-2(a).

³² See, e.g., *Dureiko v. U.S.*, 62 Fed. Cl. 340, 352-53 (Sept. 28, 2004).

³³ While USAGM’s directive describes the duties of a contracting officer under a FAR-exempt contract, it does not explicitly require that a contracting officer be named. See, e.g., USAGM, Directive Memo: Awarding Federal Acquisition Regulation (FAR) Exempt Special Agreements (Aug. 6, 2019) §§ 7.1, 7.2.

Another critical reason that a contracting officer should be assigned in the case of contracts signed under USAGM’s FAR-exempt authority is that USAGM grants the contracting officer the discretion as to which standard FAR clauses are included in the contract. USAGM’s directive states that in preparing a FAR-exempt contract, the contracting officer should disregard provisions of the FAR related to registration, publication, and competition, but that “other provisions of the FAR, such as requirements for acquisition planning, market research, contract clauses, and complete contract file documentation, shall continue to apply” as determined by the contracting officer. In this case, the lack of a contracting officer meant that no such determination was made. As such, standard FAR clauses, such as those guaranteeing access rights to contractor records for the agency and its OIG, were not included in the McGuireWoods contract.

Several Tasks Requested by USAGM Constituted Waste or Gross Waste of Government Resources

OIG compared the tasks that USAGM asked McGuireWoods to perform against the definition in government accounting standards of waste (“the act of using or expending resources carelessly, extravagantly, or to no purpose”),³⁴ and the definition in MSPB caselaw of gross waste (“more than debatable expenditure that is significantly out of proportion to the benefit reasonably expected to accrue to the government”),³⁵ and found that some constituted either waste or gross waste because they were either an extravagant or careless use of funds and the cost was significantly out of proportion to the benefit to USAGM, especially because the work was duplicative of existing resources. As previously discussed, the senior advisor assigned substantial tasks to McGuireWoods. This is especially concerning given that the hourly rates charged by McGuireWoods personnel were as high as \$930. Many of the tasks for which McGuireWoods was assigned could have been performed by federal employees who already perform similar work and whose salaries reflect a significantly lower hourly rate than McGuireWoods attorneys. For example, in 2022, the hourly rate for a GS-15 employee – the highest grade in the predominant pay scale for federal employees – is between \$71 and \$84.³⁶ However, USAGM paid for over 1,600 hours of McGuireWoods attorneys’ time who billed at a rate in excess of \$500 per hour.

As an example, one of the major tasks requested of McGuireWoods was an investigation into seven career employees that USAGM had placed on administrative leave in August 2020 after suspending their security clearances.³⁷ The McGuireWoods protocols for conducting the investigation indicates that it was primarily examining allegations of conflicts of interest,

³⁴ GAO, Government Auditing Standards (GAO-21-368G, April 2021) § 6.21.

³⁵ See, e.g., *Nafus v. Department of the Army*, 57 M.S.P.R. 386, 393 (1993).

³⁶ These amounts reflect the locality pay of the Washington, DC, metro region. <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2022/DCB.pdf>

³⁷ In June 2021, OIG determined that USAGM had improperly suspended the security clearance of six of these individuals in retaliation for whistleblowing activity.

financial mismanagement, violations of the Smith-Mundt Act,³⁸ violations of agency travel policies, and mishandling of the security clearance processes. Although some line items related to several different assignments, the invoices indicate that USAGM spent at least \$776,600 on this investigation.

This work could have instead been performed at a much lower cost by OIG, which has the explicit legal duty and responsibility for conducting investigations related to USAGM.³⁹ One of the specific types of investigations for which OIG is charged and must report on semiannually is reviewing allegations of misconduct by senior government officials.⁴⁰ Likewise, the Foreign Affairs Manual states that OIG “receives and investigates complaints . . . involving: (a) Violation of laws, rules or regulations; (b) Mismanagement, gross waste of funds, or abuse of authority; or (c) Substantial and specific danger to public health or safety.”⁴¹

The decision by USAGM to task McGuireWoods to conduct this investigation, and not OIG, raises other issues. For one, USAGM violated the Foreign Affairs Manual, which requires USAGM officials to report “known or suspected waste, fraud, abuse, false certifications, and corruption on a timely basis to the Office of Inspector General, Office of Investigations.”⁴² USAGM did not notify OIG of the allegations and simply referred them to McGuireWoods.

In addition, the primary means that McGuireWoods used to investigate the allegations was to review the official email accounts of the seven employees and flag any emails that dealt with the subject matters listed above. McGuireWoods performed minimal interviews and did not interview the seven employees themselves, despite an offer by their attorneys to provide interviews. If OIG had conducted this investigation, it would have followed the Quality Standards for Investigations, which state that in order to ensure that investigations are conducted in a timely, efficient, thorough, and objective manner, “the investigator should collect and analyze evidence through a number of techniques, including, but not limited to, interviews of complainants, witnesses, victims, and subjects.”⁴³ According to the Council of the Inspectors General on Integrity and Efficiency, these professional standards successfully guide the Inspector General investigative community in producing high-quality investigations. It is unclear what standards McGuireWoods used to perform its work and to ensure it was of high-quality.

Another example of work performed by McGuireWoods that is duplicative of existing resources is research requested by USAGM regarding federal ethics laws and the Standards of Ethical

³⁸ 22 U.S.C. § 1431 *et. seq.* The Smith-Mundt Act established the terms for U.S. government engagement in public diplomacy.

³⁹ 5 U.S.C. App. § 4(a)(1); 22 U.S.C. § 6209a.

⁴⁰ 5 U.S.C. App. § 5(a)(19).

⁴¹ 1 FAM 053.1(2) (September 10, 2018).

⁴² 1 FAM 053.2-5(c)(6) (September 10, 2018).

⁴³ Council of the Inspectors General on Integrity and Efficiency, *Quality Standards for Investigations* (November 15, 2011), at 11-12.

Conduct for Employees of the Executive Branch.⁴⁴ The invoices indicate that USAGM paid McGuireWoods at least \$18,000 for approximately 30 hours of research into federal ethics standards. However, federal law requires every agency to name a Designated Agency Ethics Official (DAEO) who administers the ethics laws within the agency.⁴⁵ One of the key responsibilities of the DAEO is to provide “advice and counseling . . . regarding government ethics laws and regulations.”⁴⁶ The Office of Government Ethics (OGE) also serves as a free resource for federal agencies by providing advice on ethics issues.⁴⁷ It is unclear why USAGM did not consult with the DAEO or OGE – both of whom have ethics experience and the legal authority to interpret federal ethics standards – before contracting with McGuireWoods. The cost of McGuireWoods providing this advice is significantly higher than the cost of seeking guidance from the DAEO or OGE and is an extravagant expenditure disproportionate to the benefit, which constitutes a waste of government funds.

CONCLUSION

In 2020, USAGM contracted with McGuireWoods to provide it with legal and investigative services and expended over \$1.6 million under this contract. Although OIG did not find a violation of the Anti-Deficiency Act, it did find contract management issues with ensuring adequate funds before work was assigned and invoiced. USAGM awarded the contract without competition under its authority to exempt procurements from federal contracting regulations but did not follow its internal procedures for doing so. Although OIG found no evidence that McGuireWoods billed USAGM for anything other than work it performed that was requested by USAGM, no contracting officer was assigned to monitor the contract, resulting in the expenditure of federal funds in a wasteful manner.

⁴⁴ 5 C.F.R. pt. 2635.

⁴⁵ 5 U.S.C. App. § 109; 5 C.F.R. § 2638.104(a). Agencies must also appoint an alternate DAEO to assist the DAEO in administering the agency’s ethics program and coordinating with the Office of Government Ethics. 5 C.F.R. § 2638.104(d).

⁴⁶ 5 C.F.R. § 2638.104(c)(4).

⁴⁷ See Office of Government Ethics, *OGE Agency Profile*.

RECOMMENDATIONS

OIG issued the following recommendations to USAGM to decrease the likelihood of the deficiencies identified in this review from reoccurring. USAGM agreed with the recommendations and provided technical comments that were incorporated into the report, as appropriate. Its complete response is reprinted in Appendix B. OIG also provided McGuireWoods' counsel with an opportunity to review a draft version of this report and incorporated his comments, as appropriate.

Recommendation 1: The U.S. Agency for Global Media, Office of Contracts, should amend its directive on Federal Acquisition Regulation-exempt procurements to require that every contract signed under the authority include a clause that requires the contractor to cooperate with the Office of Inspector General by providing access to relevant documents and to contractor personnel.

Management Response: In its August 8, 2022, response, the U.S. Agency for Global Media concurred with this recommendation, stating that although its current contract policies and guidance clearly refer to applicable provisions of the Federal Acquisition Regulations, it will incorporate language that will repeat, reinforce, and underscore requirements for sound contract management practices.

OIG Reply: This recommendation can be closed when OIG receives documentation that the directive has been amended to include a requirement to include a clause requiring the contractor to cooperate with the Office of Inspector General.

Recommendation 2: The U.S. Agency for Global Media, Office of Contracts, should amend its directive on Federal Acquisition Regulation-exempt procurements to explicitly require that a contracting officer be assigned to every contract signed under the authority.

Management Response: In its August 8, 2022, response, the U.S. Agency for Global Media concurred with this recommendation, stating that although its current contract policies and guidance clearly refer to applicable provisions of the Federal Acquisition Regulations, it will incorporate language that will repeat, reinforce, and underscore requirements for sound contract management practices.

OIG Reply: This recommendation can be closed when OIG receives documentation that the directive has been amended to include an assignment of a contracting officer for every contract.

APPENDIX A: PURPOSE, SCOPE, AND METHODOLOGY

OIG began this review in February 2021 after receiving whistleblower complaints, Congressional inquiries, and a referral that originated from the Office of Special Counsel regarding the McGuireWoods contract.

In order to conduct this review, OIG reviewed the invoices from McGuireWoods, the client file provided to USAGM by McGuireWoods, email accounts of USAGM employees, relevant laws and USAGM policies, and other relevant documents. OIG also interviewed procurement officials at USAGM. OIG attempted to interview McGuireWoods officials who worked on the contract and spent 4 months negotiating with the counsel for McGuireWoods to attempt to set up such interviews. As noted in the report, OIG was unable to do so because the contract did not require McGuireWoods to cooperate with OIG. However, the counsel for McGuireWoods provided OIG with information about several of the individual line items on the invoices. OIG's efforts to speak with McGuireWoods substantially delayed the issuance of this report.

Because OIG identified recommendations for USAGM's consideration, OIG is publishing its findings in this special review in accordance with Section (4)(e) of the Inspector General Act.

This report was prepared in accordance with OIG's standards for conducting special reviews contained in the *Office of Evaluations and Special Projects Handbook*. Deputy Inspector General Diana Shaw recused herself from this review and final signoff of this report was performed by General Counsel to the Inspector General Matthew Tuchow.

APPENDIX B: USAGM COMMENTS



U.S. AGENCY FOR
GLOBAL MEDIA

330 Independence Avenue SW | Washington, DC 20237 | usagm.gov

August 8, 2022

Mr. Jeffrey McDermott
Assistant Inspector General, Evaluations and Special Projects
Office of Inspector General
U.S. Department of State

Dear Mr. McDermott:

Thank you for the opportunity to respond to the Office of Inspector General (OIG)'s *Review of the U.S. Agency for Global Media's Contract with McGuireWoods*. I appreciate OIG examining this contract action directed by the former Chief Executive Officer (CEO) of the U.S. Agency for Global Media (USAGM), and as referred by the Office of Special Counsel.

Clearly documented in your report is the mismanagement and waste of over \$1.76 million of taxpayer funding by the former CEO when he contracted with a private law firm for investigative services -- in a failed attempt to support unjustified administrative action against senior career USAGM executives. As reported, the former CEO neither assigned a Contracting Officer to oversee management of the contract, nor ensured compliance with documented USAGM internal contracting policies and guidance. There was a clear oversight failure of the sole-sourced, ill-defined contract that incurred unbridled charges of over 700% more than the funding obligated in financial records for the contract.

Although its contract policies and guidance clearly refer to applicable provisions of the Federal Acquisition Regulations, USAGM will incorporate language recommended that will repeat, reinforce, and underscore requirements for sound contract management practices. We look forward to providing updated internal policy guidance for your review.

My thanks to you and staff for your thorough review.

Sincerely,

Brian Conniff
Deputy Director



ABBREVIATIONS

CEO	Chief Executive Officer
DAEO	Designated Agency Ethics Official
FAR	Federal Acquisition Regulation
FESA	FAR-Exempt Special Agreement
GAO	Government Accountability Office
MSPB	Merit Systems Protection Board
OGE	Office of Government Ethics
OIG	Office of Inspector General
OSC	Office of Special Counsel
SAM	System for Award Management
USAGM	U.S. Agency for Global Media

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