

LIMITED AUDIT REPORT

NEH GRANT AWARD

TO THE


ASIA SOCIETY AND MUSEUM

[GI-50066-09]

OIG-12-03 (EA)



Laura Davis, Acting Inspector General



Date

LIMITED AUDIT REPORT
NATIONAL ENDOWMENT FOR THE HUMANITIES (NEH)
GRANT AWARD
TO THE
ASIA SOCIETY AND MUSEUM

I. BACKGROUND

In 2009, NEH awarded the Asia Society and Museum (the “Society”) a million dollar, multi-year grant entitled “*The Buddha and Pilgrimage and Buddhist Art*” (GI-50066-09). This grant supported both 1) a traveling exhibition, website, symposium, catalog, and public programs concerning the art of Buddhist pilgrimages (\$500,000); and 2) the production of a two-hour documentary film concerning the sites of major events of the life of the Buddha (\$500,000). The Society handled the first component of the award in-house. In regards to the film, the work was outsourced to an independent filmmaker, David Grubin Productions (DGP). As required by NEH guidelines, the Society acted as the sponsor, directly supervising the filmmaker (subrecipient) and executing a sponsorship agreement in which DGP agreed to adhere to the Federal grant terms and conditions.

The Society underwent an OMB Circular A-133 audit (Single Audit) for fiscal year ended June 30, 2010. The audited Schedule of Expenditures of Federal Awards (SEFA) for FY 2010 reported expenditures related to NEH grant GI-50066-09 equal to the full award amount (\$1,000,000). As the Federal oversight agency, the NEH-OIG chose to “piggyback” off of the related work performed by the independent auditor (IPA) and conducted a *Quality Control Review (QCR)* of the FY2010 single audit (see Appendix A)¹. As a result of the QCR, the decision was made to expand testing in two areas. First, the QCR results raised questions concerning the Society’s compliance with OMB Circular A-110² procurement, suspension and debarment rules. Second, the material nature of the subrecipient expenses (\$500,000) and the limited evidence documented in the IPA’s working papers to substantiate testing of the underlying subrecipient transactions warranted further analysis.

II. OBJECTIVES, SCOPE AND METHODOLOGY

As summarized above, the objectives of this limited audit were to:

- Review the Society’s existing procurement policies and procedures to determine whether they are sufficient to ensure compliance with Federal procurement, suspension and debarment compliance standards.
- Determine whether the filmmaker’s expenses (charged to the NEH grant) were allowable and expended in accordance with grant objectives, OMB cost circulars, and the approved budget.

In order to accomplish the objectives of our limited audit, we obtained written policies/procedures, underlying documentation supporting subrecipient expenditures, communicated with the Society’s Chief Financial Officer (CFO), and received written responses

¹ The NEH-OIG previously issued this audit report [OIG-12-01(QCR)] on March 6, 2012. A copy was provided to the Asia Society.

² *Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations*

from the subrecipient (i.e. DGP). As part of this process, we reviewed and tested approximately 76 percent of the DGP expenses charged to the NEH grant.

Our review was conducted in accordance with *Generally Accepted Government Auditing Standards (GAGAS)* as promulgated by the Comptroller General of the United States. We began our audit on December 28, 2011 with a notification to the Society's CFO and concluded our fieldwork on March 21, 2012.

III. RESULTS OF LIMITED AUDIT

Overall, the NEH grant resulted in the successful production of a video documentary and museum exhibitions that were well received. Although our limited audit did not identify any questioned or unallowable expenses, several areas for improvement exist as follows:

- We determined that the Society limits competition in certain cases. This practice will need to be re-evaluated if the Society continues to administer Federal grants since Federal standards for nonprofits discourage the use of sole source or limited competition contracts, as articulated by OMB Circular A-110.
- The Society should expand upon the existing *Purchasing Policies and Procedures* to ensure compliance with applicable Federal procurement, suspension and debarment requirements.
- The Society's subrecipient monitoring procedures should be strengthened, as evidenced by our review of subrecipient expenditures and controls.
 - The subrecipient lacks formalized procedures to ensure organizations receiving contracts in excess of \$25,000 have not been suspended or debarred by the Federal government.
 - The subrecipient did not utilize a time/effort reporting system (i.e. timesheets) to track effort expended on the NEH project.

A. Competitive Bidding Procedures (Asia Society)

Through our review of the IPA's FY2010 single audit working papers and follow-up conversations with the Society's CFO, we determined that the Society's existing procurement policies and procedures do not necessitate competitive bidding for all classes of material procurements to include certain professional service contracts. Also, select preferred vendors may be utilized for multiple years without further competitive bidding³.

OMB Circular A-110 procurement rules exist to ensure maximum competition and the most favorable pricing to the Federal Government. Therefore, the use of limited competition/sole source contracts should be restricted to rare and unique cases.

Recommendation A

We recommend that the Society re-evaluate current procedures in which competition is limited or treated as sole source when Federal grant funds are involved. At a minimum, sufficient documentation detailing the Society's justification in these cases should be included in the procurement files.

³ According to the Society's existing procurement draft (*Required Solicitation of Quotations from Vendors* section), the three bid requirement is waived if a previous bid process remains in effect.

SUMMARY OF GRANTEE'S RESPONSE

The Society agrees with this finding. Existing policies and procedures were updated to require clear written justification when vendor competition is limited.

B. Procurement Policies and Procedures (Asia Society)

In 2010, the Society developed written *Purchasing Policies and Procedures* that will be incorporated into a comprehensive accounting manual in the near future. Although this newly enacted set of policies is a great first step and adopts some of the OMB Circular A-110 guidance, enhancements are required to ensure the Society fully adheres to the applicable Federal compliance requirements.

Recommendation B

We recommend the Society expand its current draft *Purchasing Policies and Procedures* to include a new section specific to procurements made with Federal funds, that captures all of the following language/areas recommended by OMB Circular A-110 (2 CFR Part 215):

I. All contracts executed with Federal funds:

1. Written Procurement Procedures (Section 215.44)
 - a. Avoid purchasing unnecessary items
 - b. Lease vs. buy analysis
 - c. Defined components involved with solicitations for goods and services
 - d. Cost-plus and percentage of construction cost awards shall not be used
 - e. Contractor review to include EPLS search (contracts \$25,000+)
2. Cost and price analysis (Section 215.45) - "Some form of cost or price analysis shall be made and documented in the procurement file in connection with every procurement action."
3. Contract administration (Section 215.47) - System needs to be in place to ensure conformance with the terms, conditions and specs of the contract and to ensure adequate and timely follow-up of all purchases.
4. Contract provisions (Section 215.48) - Following provisions need to be included in executed contracts:
 - a. Appendix A provisions, as applicable
 - i. Equal employment opportunity (contracts \$10,000+)
 - ii. Copeland "anti-kickback" (constructions contracts)
 - iii. Davis-Bacon Act (construction contracts)
 - iv. Contract work hours and safety standards act (construction contracts - \$100,000+)
 - v. Rights to inventions made under a contract or agreement
 - vi. Clean air act (contracts \$100,000+)
 - vii. Byrd Anti-Lobbying Amendment (contracts \$100,000+)
 - viii. Debarment and Suspension Compliance (contracts \$25,000+)

II. Contracts exceeding the small purchase threshold (\$100,000):

1. Procurement Records (Section 215.46) - Procurement records shall include the following, at a minimum: a) basis for contractor selection; b) justification for lack of competition when competitive bids or offers are not obtained; and c) basis for award cost or price.

2. Contract provisions (Section 215.48) - Following provisions need to be included in executed contracts:
 - a. Admin, contractual, or legal remedies in instances in which contractor violates terms
 - b. Termination provisions
 - c. Bonds required w/construction work
 - d. Contractor records must be made available to Federal bodies for audit purposes
3. Additionally, the grantee may need to obtain the awarding Federal agency's prior approval (Section 215.44e) when:
 - a. Award is non-competitive or only one bid received from a solicitation/RFP;
 - b. Award to be made to other than lowest bidder (sealed bids);
 - c. Specifies a "brand name" product; or
 - d. Proposed contract modification materially changes the scope of a contract or increases the contract amount.

SUMMARY OF GRANTEE'S RESPONSE

The Society agrees with this finding. The organization's *Purchasing Policy and Procedures* were expanded to include a section specifically addressing procurements made with Federal grant funds.

C. Testing of Subrecipient Expenses

Although detailed testing of the filmmaker's expenses did not identify any unallowable or questioned costs, two compliance related findings were uncovered:

1. The subrecipient has not fully implemented formal procurement policies and procedures as required by OMB Circular A-110 (2 CFR Part 215)⁴ and the NEH *General Terms and Conditions for Awards to Organizations*. Specifically, recipients must ensure that all parties with whom they contract for goods or services in excess of \$25,000, are not debarred or suspended from doing business with the Federal government.

Based upon our testing, we determined that the subrecipient executed one material contract in excess of \$100,000 to produce the animation footage. There was no evidence that a search of the Excluded Parties List System (EPLS) was conducted and the contract lacked a related clause in which the vendor asserts that it was neither suspended nor debarred. The Society limited subrecipient oversight of this function to the inclusion of a clause referencing the Federal procurement rules in the sponsorship agreement signed with David Grubin Productions.

Upon further testing, we determined that the vendor is not currently suspended or debarred by the Federal government, based on a query of the EPLS.

2. Time/effort reports (i.e. timesheets) were not utilized by DGP employees to track and substantiate time worked on the NEH project as required by OMB Circular A-122 (2 CFR Part 230)⁴. It is our understanding that two employees (editor and associate producer) devoted all of their time to the Buddha film project; therefore, we conclude that the payroll costs charged to the NEH are reasonable and proper. A third employee, [REDACTED], is the owner of the company. By his own admission, he primarily worked on the Buddha project but spent time on other areas. However, timesheets were not used to capture the allocation of his time. He estimated that approximately eighty-five percent of his time was

⁴ OMB Circulars A-110 and A-122 do not directly apply to "for-profit" entities. However, the Society's executed sponsorship agreement with David Grubin Productions passed these requirements down to this subrecipient.

spent on the Buddha project. Based upon the fact that only \$52,500 was charged to the NEH out of a total budget for his salary of \$150,400 (33%), actual costs incurred by the Federal Government appear reasonable. However, there is still a technical finding due to the lack of timesheet use to substantiate charges to the NEH award.

Recommendation C

The acceptance of Federal funds requires the grantee to develop processes to ensure compliance with the various Federal administrative requirements. We recommend that the Society expand the scope of its subrecipient monitoring activities and 1) begin reviewing a sample of material contracts executed by subrecipients for compliance with Federal procurement rules; and 2) gain an understanding of payroll procedures utilized by these entities to ensure compliance with the applicable Federal requirements. The implementation of these new procedures will strengthen the effectiveness of the Society's subrecipient monitoring role and ultimately ensures the Society's conformance with the terms and conditions of the NEH award.

SUMMARY OF GRANTEE'S RESPONSE

The Society agrees with this finding. The above recommendations have been incorporated into the organization's *Purchasing Policy and Procedures*.

IV. EXIT CONFERENCE

The results of our review were discussed with the Society's CFO on March 29, 2012. Grantee management agreed with the above internal control recommendations and subsequently implemented corrective action as depicted in the written response provided to the NEH-OIG on June 4, 2012.

Appendix A

The Single Audit Act, Public Law 98-502, as amended, was enacted to improve the financial management of State and Local Governments and nonprofit organizations by establishing a uniform set of auditing and reporting requirements for all Federal award recipients required to obtain a single audit. OMB Circular A-133 establishes policies that guide the implementation of the Single Audit Act and provides an administrative foundation for uniform audit requirements of non-Federal entities expending Federal awards. Entities that expend \$500,000 or more are subject to the Single Audit Act and the audit requirements in OMB Circular A-133. Therefore, they must have an annual single or program-specific audit performed under Government Auditing Standards and submit a complete reporting package to the Federal Audit Clearinghouse (FAC).

Utilizing the *Guide for Quality Control Review of OMB Circular A-133 Audits (2010 Edition)*, we reviewed the FY2010 single audit of the Society and the related reporting package submitted to the FAC. This guide, which is issued by the Council of Inspectors General on Integrity and Efficiency (CIGIE), represents the standard guidance used to perform a quality control review (QCR). A QCR institutes additional requirements above and beyond an A-133 desk review to include a detailed review of the auditor's working papers. We conducted our on-site review of the working papers during the month of November 2011 at the IPA's New York City office. The QCR was conducted in accordance with the Quality Standards for Inspection and Evaluation.

As described in the QCR guide, the objectives of a quality control review are to:

1. Determine whether the audit was conducted in accordance with applicable standards, which include Generally Accepted Government Auditing Standards (GAGAS) and Generally Accepted Auditing Standards (GAAS), and meets the requirements of OMB Circular A-133;
2. Identify any follow-up work needed to support the opinions contained in the audit report; and
3. Identify issues that may require Federal program management attention.

The QCR focused on the following qualitative aspects of the single audit:

- Auditor Qualifications
- Independence
- Due Professional Care
- Quality Control
 - Firm Peer Review
 - Planning and Supervision
 - Sufficient Audit Documentation
- Internal Control and Compliance Testing
- Schedule of Expenditures of Federal Awards (SEFA)
- Determination of Major Programs
- Data Collection Form (DCF) and Reporting of Deficiencies

GRANTEE RESPONSE TO AUDIT REPORT

June 4, 2012

Attention: Audit Resolution Section
National Endowment for the Humanities
Office of Inspector General
1100 Pennsylvania Avenue NW, Room 419
Washington, DC 20506

RE: Audit Report OIG-12-03 (EA)

I have received and reviewed your report dated May 4, 2012. Overall, we are in agreement with the recommendations put forth in the report and believe that they will strengthen our procurement system as well as enhance our compliance with NEH and Federal requirements.

Specifically, we are taking the following actions:

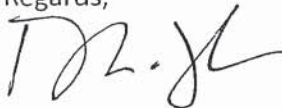
Recommendation A: We are enhancing our documentation requirements in our Purchasing Policy and Procedures to require clear written justification where vendor competition is limited.

Recommendation B: We have expanded our Purchasing Policy and Procedures to include a section specifically addressing procurement under federal funded purchases.

Recommendation C: We agree with the recommendation to strengthen our sub-recipient monitoring procedures to ensure that sub recipients are in compliance with Federal procurement rules. We have added these to our Procurement Policy and Procedures.

Please advise me if you see any additional opportunities to address these recommendations.

Regards,



Donald L. Nagle
CFO & VP Operations

cc: Ms. Laura Davis


Mr. Steve Elsberg

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