



The Library of Congress
Office of the Inspector General



**Office of the Librarian
Office of Contracts**

*Lack of Compliance With Library
Contracting Policy Is Widespread*

Special Project No. 2008-SP-101
March 2008

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▶▶ EXECUTIVE SUMMARY

Library contracting for goods and services amounts to about \$189 million annually and represents the third largest use of Library funds. In view of the significance of this function, we undertook a two-part assessment of the Library's Contracts office. We issued a report on the first part of our assessment in September 2007 which revealed several significant operational weaknesses threatening the Library's ability to timely obtain quality goods and services at a fair price. The weaknesses included a longstanding vacancy in the Office of Contracts and Grants Management's Director position and a continuing shortage of permanent contracting staff, among other things. Management generally agreed with our findings and is taking action to implement our recommendations.

This report provides the results of the second part of our assessment. We engaged Suntiva Executive Consulting (Suntiva) for this part to evaluate whether Library contracting technically conforms to the Library's procurement policies, including its policy to follow the Federal Acquisition Regulation (FAR).

Suntiva's report stated that the Contracts Office Chief has issued some strong, well-stated policies and procedures to help staff conform to the Library's contracting requirements. However, in addition to the long-standing management issues our first report identified, Suntiva also found many important problems which collectively show widespread and serious lack of compliance with applicable requirements in the Library's contracting activities. Through its evaluation, Suntiva identified:

- widespread lack of compliance with Library contracting requirements, including, among others, inadequate justifications for "fair and reasonable" prices and minimal, if any, acquisition planning;
- inadequate knowledge of the contracting process throughout the entire procurement chain, from Library staff involved in initiating procurements to Contracts Office staff charged with executing them;
- contract review procedures, including a high-level management review procedure, which do not provide effective assurance that Library procurement activities conform to applicable requirements;

- missing and incomplete official contract files; and
- a technically questionable Momentum software contracting module that may be impeding the Library's ability to effectively manage its procurement activities.

Collectively, these findings indicate that the Library has little assurance that it is obtaining the best value for its contracting dollar, and further, that the Library's ability to withstand challenges by contractors is, at best, weak. We issued many reports over the last several years that call attention to significant management issues affecting the Contracts Office and believe that Suntiva's findings confirm those issues.

In general, Suntiva's recommendations focused on developing a training curriculum addressing the roles of all Library procurement participants, providing acquisition training to all Library staff involved in procurement, enhancing management oversight, improving the condition of the Library's official contract files, and examining the technical capability of the Momentum contract writing system, among other actions.

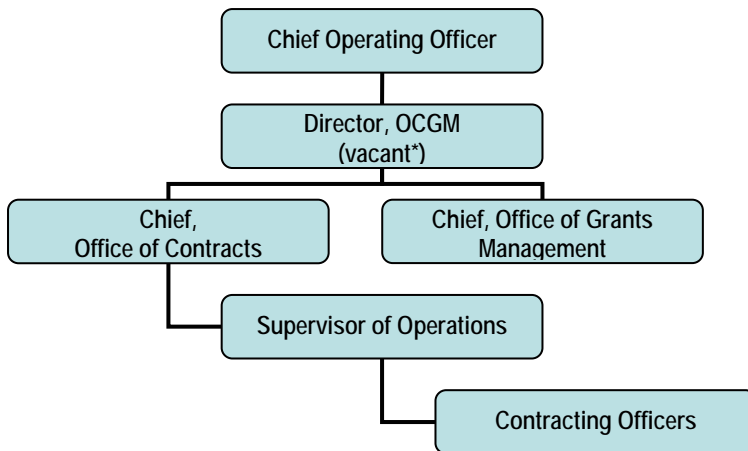
We provided a summary of Suntiva's findings in this report and included the full text of Suntiva's findings and numerous recommendations in Appendix B. In written comments on a draft version of Suntiva's report and our corresponding summary, Library management concurred with all of Suntiva's recommendations and identified several actions that were being taken to improve the contracting function. However, it took exception to some elements of some of Suntiva's findings. Suntiva made appropriate modifications to its report based on management's comments.

A summary of management's comments and Suntiva's response evaluating the noted exceptions begins on page 13 of this report. We included management's full response in Appendix A.

►► INTRODUCTION

It is the Library's policy to follow the Federal Acquisition Regulation (FAR) in the procurement of goods and services under Library of Congress Regulation (LCR) 2110¹ unless a deviation from the FAR is determined to be in the Library's best interest.

The Librarian, as agency head, is authorized to enter into contracts and is responsible for delegating procurement authority to carry out the mission of the Library. Structurally, the Director of the Office of Contracts and Grants Management (OCGM) is the Library's senior procurement officer and performs the functions of the "Senior Procurement Executive" as specified in the FAR. The Director reports to the Library's Chief Operating Officer and, among other things, is responsible for establishing procurement policies and procedures, issuing appropriate procurement directives, and approving all deviations from the FAR for procurements under LCR 2110. Although created in 2003, the position was not filled until April of 2008 when it was staffed under a temporary appointment.



*Since this report was originally written, the position has been filled.

On average, over the last couple of years, contracting officers (COs) have awarded contracts valued at \$189 million annually to acquire supplies, services, and equipment. COs work under the direction of the OCGM Director, the Contracting Office Chief, and the Supervisor of the Operations Section.

The Library's contracting function is a collaborative process involving contracting officers, program offices, and

¹ LCR 2110 defines the authority, policy, and responsibilities for the procurement of goods and services in the Library. It also specifies Library officials to whom authority has been delegated to award contracts for the procurement of goods and services. LCR 2110 does not govern the Congressional Research Service to the extent of its separate authority under 2 U.S.C. § 166(h) or cover the procurement of goods and services for which other delegations of procurement authority have been made or are established by law or regulation.

contracting officer's technical representatives (COTRs). Each party has separate duties and responsibilities as specified in LCR 2110. The Office of the General Counsel (OGC) is responsible for providing legal assistance to those involved in Library contracting activities, and for reviewing and approving all procurement actions or award recommendations that exceed \$100,000. The Contracting Office Chief, OCGM Director, General Counsel, Chief Operating Officer, and/or the Librarian are responsible for reviewing and approving contracting actions based on various dollar thresholds.

►► OBJECTIVES, SCOPE, AND METHODOLOGY

This report provides the results of the second part of a two-part OIG assessment of the Library's contracting function. The first part of our assessment focused on the management of the Contracts Office. In this part, our objective was to evaluate whether the Library conforms to its policy to follow the FAR (i.e., LCR 2110) and internal policy on procurement of non-personal services from independent contractors (i.e., LCR 2111).²

To perform this part of our assessment, we engaged Suntiva Executive Consulting (Suntiva). Suntiva is an advisory firm that is recognized for its expertise in the field of federal acquisition, among other areas. It has recently provided acquisition consulting services to several federal agencies including the Department of Defense (DoD) Threat Reduction Agency, Office of Naval Research, DoD Washington Headquarters Service, Missile Defense Agency, International Defense Acquisition Resource Management Program of the U.S. Naval Postgraduate School, Naval Air Warfare Center, U.S. Marine Corps Systems Command, and the Department of Homeland Security.

Government Auditing Standards require that the professional qualifications of specialists be evaluated to determine whether they possess the necessary skill and knowledge in their field. We reviewed the qualifications of Suntiva's practitioners who worked on this evaluation and determined that they are intimately familiar with federal acquisition rules, regulations, procedures, and practices. Their resumé's are included as part of Suntiva's report in Appendix B.

In order to make the most efficient use of the contractor, we decided to limit the scope of Suntiva's review to contracting actions processed in fiscal year (FY) 2007 valued at \$25,000 or more. In FY 2007, the Library processed 851 of these actions. To accomplish its evaluation, Suntiva reviewed official Library files for a sample of 103 of those actions.³ The 103 actions pertained to 82 contracts initiated in FY 2007, 11 contracts

² The Library has not adopted the FAR for procurements under LCR 2111.

³ The Library's official contract files are maintained in paper form and are located in the OCGM work area of the Library's Adams Building.

initiated in FY 2006, and 10 contracts initiated in FY 2005, and the actions ranged in value between \$25,175 and \$26.4 million. The sample included 92 contracts that were subject to the FAR and 11 contracts that were subject to the Library's policy on procuring non-personal services from independent contractors. A complete description of Suntiva's sampling methodology is included as part of Suntiva's report in Appendix B.

Our role in this evaluation was threefold: first, we provided Suntiva some focus for policy and operational matters which affect the Library's contracting function. Second, we coordinated the firm's access to the Office of Contracts' principals and official contract files, and facilitated contacts between Suntiva and Library personnel. Third, although Suntiva was responsible for determining the appropriateness and reasonableness of the methodology and criteria it used for the review, we provided Suntiva with its scope, and reviewed and obtained an understanding of its methodology so as to be able to assess Suntiva's findings and conclusions.

This report presents in summary form Suntiva's findings. The full text of Suntiva's report is provided in Appendix B.

►► SUMMARY OF FINDINGS

Suntiva produced a lengthy, detailed report outlining its findings and conclusions. Its report indicated that the Chief of the Contracts Office has issued some strong policies and procedures to help the Library conform to contracting requirements. However, the report identified ten areas which collectively show a widespread lack of compliance with procurement requirements. Although the issues were wide-ranging and diverse in nature, Suntiva identified four problems it believes contributed most heavily to the deficiencies:

- A lack of knowledge and/or experience among Library staff who participate in the contracting function;
- Possible technical deficiencies affecting the Momentum contract writing system;
- A management review procedure that has not been fully effective; and
- Uncertainty about Library policy on implementing certain FAR requirements.

Because of the length and detail in the Suntiva report, we condensed and grouped it into two broad sections: the major findings and the main reasons Suntiva determined were the causes of these problems. We also included the full text of Suntiva's report in Appendix B.

I. Major Findings

There were ten general areas in which Suntiva found significant noncompliance with regulations, including both internal Library regulations and the FAR. Some instances were more technical rather than substantive in nature, but others could have a significant impact on the Library. In some instances, it was difficult to assess the monetary impact of the problems because of the nature of the problems Suntiva found. For example, although Suntiva found little evidence that the Library obtained the best price for a given contract, it would be impossible to revisit the transaction in order to determine

what, if any, monetary impact occurred as a result. Following are Suntiva's general findings:

(1) Contract Format/Contract File Maintenance

Suntiva reported that the Library generally does not comply with requirements regarding contract format (FAR 15.204-1) or contract file maintenance (FAR Subpart 4.8). The firm found that contracts and supporting documents, including critical decision point documents (e.g., contractor proposals, Independent Government Cost Estimates (IGCEs), etc.), were frequently missing from contract files. In other cases, material portions of contracts and/or supporting documents were missing. In a few cases, Suntiva could not locate contracts and corresponding contract files. Failure to properly maintain and locate contract files may have significant legal ramifications, particularly if the Library is challenged by or wishes to challenge a contractor.

Among other reasons, Suntiva attributed these problems to (1) a cultural tradition in the past which minimized the importance of business record-keeping, (2) a possible lack of trained, skilled and/or committed human resources, and (3) possible technical flaws in the Momentum contract writing system (see Appendix B, Findings 1, 2, and 11).

(2) Acquisition Planning

Suntiva reported that the Library generally does not comply with requirements regarding acquisition planning (FAR Part 7). Acquisition planning is the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the agency need, in a timely manner and at a reasonable cost. Failure to properly plan acquisitions, particularly large ones, may limit the Library's ability to improve competition and thus obtain the best value for its procurement dollar.

Suntiva attributed this situation to an apparent absence of a planning structure that provides for advance consultation on upcoming procurements, especially those requiring service units to cooperate in market research or seeking to develop alternate and innovative acquisition methods. Suntiva believes that the pressure to quickly process contracting requests, especially at fiscal year ends, led to hurried contract reviews (see Appendix B, Finding 3).

(3) Obtaining Fair and Reasonable Prices

Suntiva reported that the Library generally does not comply with requirements calling for supplies and services to be purchased at fair and reasonable prices and for justifications for corresponding price decisions (FAR 15.402 (a), FAR 13.106-3, FAR 15.406-3, and LCR 2111). The firm found that only one of the 24 largest contracts it reviewed had documentation that included sufficient details to justify the “fair and reasonable” price determination that was made by the contracting officer.

Among other reasons, Suntiva attributed this situation to (1) excessive haste in processing/awarding contracts, (2) insufficient or a lack of training particularly in techniques for cost and price analyses, (3) failure of management to emphasize, or failure of the project management team to understand, the critical importance of the IGCE and other cost/price analytical documents, and (4) a contract review process that is not identifying this weakness and providing constructive feedback (see Appendix B, Findings 4, 6, and 18.)

*(4) Contracting Officer Authority and
Delegation of Limited Contracting Duties*

Suntiva reported that the Library generally does not comply with requirements regarding the:

- sole authority of the contracting officer to
 - o enter into,
 - o administer,
 - o and/or terminate contracts.
- requirements regarding permissible, but limited contracting duties that contracting officer representatives may perform only when they are appropriately delegated (FAR 2.101). In other words, only properly trained contracting officers should be in charge of the contracting process.

Suntiva found that key Library contracting duties and numerous decisions critical to the Library’s contracting process have been accomplished by persons who are not authorized or trained to perform them. For example, Suntiva noted some service units that regularly solicit entire contract proposals before coordinating the acquisition or performing acquisition planning with contracting officials.

Suntiva indicated that performance of critical contracting responsibilities by staff who are not part of the Contracts Office neutralizes the system of checks and balances which is critical to an effective procurement system and that the potential for fraud, waste, and poor performance is considerable when diffusion of contracting responsibilities exists (see Appendix B, Finding 5).

(5) Determining the Responsibility of a Prospective Contractor

Suntiva reported that the Library generally has not complied with Library requirements to affirmatively determine the responsibility of a prospective contractor before awarding the contract (FAR 9.103). In many cases, Suntiva found that the prospective contractor's ability to perform the contract work had not been analyzed and in other cases the analyses were based on a lack of, or insufficient, information. Failure to determine whether or not a contractor is actually able to carry out its responsibilities poses a serious risk to the Library that it will not receive the product or service it bargained for.

Suntiva attributed this situation to insufficient attention to and/or training on application of the requirement (see Appendix B, Finding 7).

(6) Verifying a Prospective Contractor's CCR Registration

Suntiva found no evidence indicating that the Library complies with the requirement to verify a prospective contractor's registration in the Central Contractor Registration (CCR) database before awarding contracts (FAR 4.1103 (a)). Suntiva believes that contract performance could be significantly delayed if a contract is issued to a contractor not registered in the CCR database and that confusion and delay could also affect the contract's payment cycle.

The firm attributed this situation to (1) confusion as to whether the Library implements this FAR requirement, (2) the confusing wording of FAR 4.1103 (b) which could lead to misinterpretation, and (3) a lack of training on the application of the CCR verification requirement (see Appendix B, Finding 9).

(7) Service Contract Act Responsibilities

Suntiva found that most contracts it reviewed did not comply with the Service Contract Act of 1965 (SCA). To comply with the SCA, agencies are required to check with the Department

of Labor to determine prevailing geographic area wages for the service that will be provided through the contract (FAR Subpart 22.10). Suntiva noted that the terms and conditions of the Library's contracts mandate compliance with the SCA and FAR requirements.

Although some of the Library's contracts may be exempt from SCA requirements, Suntiva believes the requirements are applicable to many of the contracts the firm reviewed. Suntiva indicated that the failure to address the SCA and FAR requirements may be attributable to (1) confusion as to whether the Library implements this FAR requirement, and (2) pressure on the Contracts Office staff to quickly process contracts, among other things (see Appendix B, Finding 10).

(8) Establishing and Administering Various Types of Contracts

Contracts have differing requirements, depending on the type of contract. For example, fixed-price contracts have different requirements from cost-reimbursement contracts. Likewise, contracts are administered differently, based on their type.

Among the contracts it reviewed, Suntiva noted a variety of inconsistencies between requirements and subsequent administrations. A number of contracts that Suntiva reviewed were awarded as fixed-price contracts, but appeared to have the characteristics of cost-reimbursement contracts. For example, Suntiva noted a "fixed-price" contract to which funds were added with no corresponding modification made to its scope. In another example, funds were added to a completed "fixed-price" contract which did not include an authorization to provide reimbursement for a cost overrun. By failing to follow appropriate procedures in the administration of contracts, the Library exposes itself to challenges by contractors and others.

Suntiva believes the inconsistencies were attributable to (1) a lack of training on contract types and their administrations, and (2) a contract review process that has not caught and stopped the inconsistent practices when they have occurred, among other things (see Appendix B, Finding 12).

(9) Procedures for Contract Modifications

Suntiva found that many contract modifications were not processed according to required procedures (FAR Part 43). Furthermore, Suntiva found that modifications were

inappropriately used to make unjustified and unauthorized changes to contracts. In one case, a modification was processed to inappropriately increase a contract's funding and extend its period of performance. The modification cited an invalid FAR authority and was processed unilaterally by the contracting officer; the contractor's approval and signature, which should have been obtained to correctly process the modification, were absent. Misuse of contract modifications as a means to extend the scope of a contract may result in invalid contracting actions.

Suntiva attributed this situation to (1) a lack of training on requirements applicable to contract modifications, and (2) an inattentive contract review process (see Appendix B, Finding 16).

(10) Procedures for Contract Options

A contract option provides the government the opportunity to solicit interest and seek competition for foreseeable contract requirements while not committing it to contracting responsibilities for those requirements when the basic contract is awarded. A formal written determination is required when the option is included in the basic contract and when the option is subsequently exercised (FAR Subpart 17.2).

Suntiva found that only two out of the 13 largest contracts containing options that it reviewed included contract options that were properly justified, authorized, or supported according to Library-required procedures. Suntiva asserted that although options are legitimate contracting tools, they should not take the place of a proper acquisition plan, and should only be established and exercised when they are in the government's best interest.

Suntiva attributed this situation to inadequate staff training and management oversight (see Appendix B, Finding 17).

II. Reasons for Noncompliance

Suntiva concluded that there were several reasons why the Library failed to comply with contracting requirements. We grouped these into four broad categories as follows:

(1) Lack of Staff Knowledge and/or Experience

Many of the various Library staff who participate in the contracting process do not adequately understand Library and FAR procurement requirements and therefore are not prepared to perform their respective duties. From Suntiva's perspective, staff who are not adequately prepared included those in the entire procurement chain, from inception – project managers and COTRs – to execution and administration – contracting officers and contract specialists, among others.

To address this problem, Suntiva recommended that a training curriculum be developed covering the full range of the Library's contracting requirements. This training should be required for all staff who have a role in the procurement process and that required and recommended training courses be taken based on a staff member's role in the process.

(2) Momentum May Have Technical Deficiencies

In the fall of 2004, the Library implemented the Momentum Financial system. Part of the Momentum implementation also included a contracting module. Suntiva reported that this module may not be configured correctly. The firm found that contracts written prior to the Library's adoption of Momentum generally conformed to the FAR-required Uniform Contract Format (UCF). However, since Momentum has become the Library's contract writing system, most Library contracts and modifications have been, at best, only marginally compliant with the FAR's format requirements.

In almost all cases it reviewed, Suntiva found that among other things, terms and conditions were not properly incorporated or addressed at all in contracts, UCF section headings were not followed by substance, and necessary attachments were not identified or attached to contracts. Suntiva recommended that an in-depth assessment of the Momentum contract module be conducted and that the system be replaced if it is unable to meet the Library's needs. The Library is currently embarking on an effort to better implement the contracting module. The Office of the Chief Financial Officer has allocated funds to study this issue.

(3) The Management Review Procedure Has not Been Fully Effective

Suntiva's report indicates that the contract review and approval procedure – which calls for the Contracting Office

Chief, OCGM Director, General Counsel, Chief Operating Officer, and/or the Librarian to review contracting actions according to various dollar thresholds (LCR 2110) – has not served as an effective challenge for proposed acquisitions nor has it exposed systemic contracting issues that have detrimentally affected the Library contracting function.

Suntiva found contracting actions that were either lacking supporting documents or where the IGCE was not realistic. Notwithstanding these significant problems, Library officials charged with reviewing the actions did not challenge them. Further, other files the firm reviewed revealed contracts that were awarded before being properly reviewed by Library officials, even though the files contained significant information which should have been brought to their attention.

Suntiva attributed this situation to a contract decision-making process which is generally rushed and not conducive to identifying non-compliance with requirements. Among other things, Suntiva recommended that the management review process be changed to one that calls for the officials to simultaneously review contracts as a single group (i.e., review panel) and make go/no go award decisions based on contract presentations by contract specialists and, when needed, project managers.

*(4) Uncertainty Regarding Library
Policy on Certain FAR Requirements*

Suntiva's report indicates that the Library's general lack of compliance with certain FAR requirements may be due in part to uncertainty regarding whether it is Library policy to implement those requirements. Such FAR requirements include the requirement to verify a prospective contractor's registration in the CCR database (FAR 4.1103 (a)) and requirements involving implementation of the SCA (FAR Subpart 22.10). Suntiva recommended that the Library address uncertainty about the FAR's implementation with clear policy.

►► MANAGEMENT COMMENTS AND SUNTIVA'S RESPONSES

In a memorandum to the Inspector General, Library management stated that the Suntiva report highlights the complex and far reaching efforts required to transform the Library's procurement life cycle program. It supported all of the report's recommendations and identified a variety of actions the Library was taking or planned to take to begin transforming the program. For example, the Library immediately appointed an experienced staff member to be the Acting OCGM Director on a temporary basis and planned to staff the position with a permanent Director by June 2008. However, management took exception to some elements of five findings in a draft version of Suntiva's report. A copy of management's response is provided in Appendix A.

Suntiva evaluated and responded to management's memorandum, made appropriate modifications to its report based on its comments, and included the full text of the response as an appendix to its report. A summary of management's comments and Suntiva's corresponding responses follows.

Suntiva Report	Management Comment	Suntiva Response
<i>Finding # 1</i>		
<p>Element 1: The Office of Contracts could not locate files for contracts LC05C0398 and LCITS06C0043.</p>	<p>According to management, LC05C0398 is a new number for a FY 2003 contract that was generated as part of the 2004 Momentum conversion process. The file for LCITS06C0043 was not missing but was being used by a contract specialist.</p>	<p>Suntiva noted that files for those contracts were not provided to Suntiva during its review. Accordingly, Suntiva did not remove its references to the missing files in Finding #1 from its final report, but did include management's explanations about the files as footnotes in the text of the finding.</p>
<p>Element 2: It took up to five weeks for the Office of Contracts to locate some contract files or critical file portions.</p>	<p>Management did not agree, indicating that Suntiva did not keep track of when individual files were provided and therefore had no valid support for its statement. Additionally, there were times when OCGM staff took files from Suntiva to process current actions.</p>	<p>Suntiva did not agree with management's comments. It claimed that its team members tracked contract numbers for the files that Suntiva requested, for the files that Suntiva received, and for the files that OCGM did not provide to Suntiva. Accordingly, Suntiva stood by its report statement.</p>

Suntiva Report	Management Comment	Suntiva Response
<p>Element 3: Signed contract modifications were missing from several contract files.</p>	<p>Management did not agree. Momentum allows modifications to be processed out of sequence. The fact that Suntiva did not see modifications in sequential order only confirms that modification numbers were skipped in Momentum and does not mean the modifications were missing.</p>	<p>Management's comments do not confirm that the modifications Suntiva identified as missing in fact do not exist. Accordingly, Suntiva did not remove its references to missing modifications from Finding #1, but did include management's explanation as a footnote in the text of the finding.</p>
Finding # 3		
<p>Element 1: Letter contract LCNLS07D0093 was issued weeks before it was presented to management for the review mandated by LCR 2110.</p>	<p>Management did not agree and referenced letter contract LCNSL07D0082 in its response. The letter contract limited the contractor's performance to \$100,000 which was within the contracting officer's authority to issue.</p>	<p>Suntiva assumed that management's comments pertained to contract number LCNLS07D0093 and not LCNLS07D0082. Suntiva recognized the dollar level of the contracting officer's authority, but Suntiva stated that its interpretation of LCR 2110 differed from that of management. In Suntiva's view, the LCR requires the appropriate official to approve a contract based on its projected value; splitting the award does not meet the spirit of the LCR. Accordingly, Suntiva clarified its report to indicate that the contracting officer authorized the letter contract for an amount not-to-exceed \$100,000, but also provided in its report its interpretation of LCR 2110.</p>
Finding # 8		
<p>Element 1: Management was led to believe that contract LCOSI05C0068 was to be awarded using the GSA schedule, but it appears from the file that this was not the case.</p>	<p>Management did not agree, stating that the award was made using the GSA Schedule contract number GS35F5014H.</p>	<p>Suntiva was satisfied with management's explanation and eliminated its comment on that contract from Finding #8.</p>

Suntiva Report	Management Comment	Suntiva Response
<p>Element 2: Contract LCITS07D0023 was issued for an amount higher than the amount briefed to management.</p>	<p>Management did not agree. A management official approved an award amount of \$273,710 and the original order was valued at that amount.</p>	<p>Suntiva was satisfied with management's explanation and eliminated its comment on that contract from Finding #8.</p>
<p>Element 3: Contract LCNLS07D0093 was issued weeks before management approved it despite the requirements of LCR 2110.</p>	<p>Management did not agree. Management officials approved the award on August 8, 2007 and the contract was awarded on August 9, 2007.</p>	<p>Suntiva noted that management approved the definitive version of the contract on August 8, 2007 and that the contracting officer authorized the initiation of work (which led to LCNLS07D0093) with a letter contract on June 28, 2007 for an amount not-to-exceed \$100,000. Suntiva acknowledged the dollar level of the contracting officer's authority, but stated that its interpretation of LCR 2110 differed from that of management. In Suntiva's view, the LCR requires the appropriate management official to approve a contract based on the contract's projected award value and splitting the award does not meet the spirit of the LCR. Accordingly, Suntiva clarified its report to indicate that the contracting officer authorized the letter contract for an amount not-to-exceed \$100,000 and also provided in its report its interpretation of LCR 2110.</p>
<p>Finding # 10</p>		
<p>Element 1: Contract LCCOP06D0076 does not appear to be exempt from the FAR's wage determination requirements.</p>	<p>Management did not agree because LCCOP06D0076 was a delivery order. Delivery orders under the contract did not require wage determinations because the FAR requirements were covered in the base contract.</p>	<p>Suntiva stated that wage determinations are typically updated on an annual basis. Therefore, in its opinion, when the Library issues delivery orders for IDIQ contracts that span a period of time, the best procedure is to ensure that the wage determination has not changed from the time that the basic contract was awarded. If the wage determination has been updated, this fact should be incorporated in the new delivery order. Suntiva modified its report to clarify its position on wage determination requirements for contracts that span beyond a year.</p>

Suntiva Report	Management Comment	Suntiva Response
<i>Finding # 16</i>		
<p>Element 1: Modifications were missing from the file of LCLSC050313.</p>	<p>Management did not agree. Momentum skips modification numbers as modifications are processed. Accordingly, modifications 0001, 0004, 0007, 0008, and 0012 do not exist.</p>	<p>Suntiva opined that management's comments do not confirm that the modifications it identified as missing in fact do not exist. Accordingly, Suntiva did not remove its references to missing modifications from Finding #16, but did include management's explanation as a footnote in the text of the finding.</p>

Major Contributors to This Report:

Nicholas Christopher, Assistant Inspector General for Audits
John Kane, Senior Auditor

▶▶ APPENDIX A: MANAGEMENT RESPONSE MEMORANDUM

United States Government

*Chief Operating Officer***Memorandum**

Library of Congress

TO : Karl Schornagel
Inspector General

FROM : Lucy D. Suddreth
Asst. Chief Operating Officer

SUBJECT : *Assessment of the Office of Contracts-* Draft Audit Report
No. 2008-SP-101

Date: March 28, 2008

This memo provides our written comments on Suntiva's draft report on the Office of Contracts. After considerable review and discussion with Contracts staff we support all of the recommendations made. However, there are exceptions taken to some of the findings reported by Suntiva and I have attached those reasons for your review. That being said, several corrective actions are underway or will be completed within the next 120 days, including

- Filling of three (GS-13) contract specialists positions; the vacancy announcement closes on April 11, 2008,
- Appointment of an Acting Director of Contracts and Grants Management by April 14, 2008; the vacancy announcement for the permanent director will be posted and recruited by June 2008,
- Creation of an Action Plan with milestones and deadlines for completion of recommendations has been disseminated to CGM team leaders,
- Completion of a systems requirement document for the Momentum Acquisitions Module capabilities. Many of the functions are already operational but need to be aligned for optimum workflow,
- Creation of a library-wide contracts working group, by April 11, 2008. This group will be used to implement the CGM' policy and procedures' manual, pilot mandatory procurement related training, and, improve communication between customers and contract specialists.

The Suntiva report highlights the complex and far reaching efforts required to transform the Library's procurement life cycle program. I am encouraged by the ongoing work and accomplishments, to date, and am committed to seeing through the full transformation of this vital program.

Attachment

SUNTIVA FINDINGS IN WHICH WE DISAGREE**Finding #1 Incomplete Contract File Record Keeping**

- We disagree with the auditor's finding that two of 103 files could not be found. [REDACTED] was created in Momentum to reflect this FY 2003 award. Contracts awarded prior to the implementation of Momentum in 2004, were converted into Momentum and in doing so, new contract numbers were generated.
- Modifications processed under this 2003 contract were done so using information contained in Momentum and documentation CGM was able to retrieve from the COTR and the Contractor. These documents were provided to the auditors to support this FY 2003 contract award. [REDACTED] was not lost or missing but simply being used by a Contract Specialist while processing a current action.
- We disagree with the auditor's finding that some files took up to 5 weeks to be found. The auditors did not keep track of when individual files were given to them to support the validity of this statement. There were times when files were needed by CGM staff to process current actions and were taken from the auditors.
- We disagree with the auditor's finding that signed modifications were missing from several files. Momentum allows modifications to be processed out of sequence. Therefore, the fact that the auditors did not see modifications in sequential order did not mean the modifications were missing. It only confirmed that modification numbers were skipped in Momentum.

Finding #3 – Lack of Acquisition Planning

- We disagree with the auditor's finding that a letter contract [REDACTED] was issued without authorization in order to continue services. This letter limited the contractor's performance to \$100,000, which was within the Contracting Officer's authority to issue.

Finding #8 – Ineffective Management Approval Process

- We disagree with the auditor's finding that Management was misled when they approved the award of [REDACTED]. The auditor's found that the award was not made using the GSA Schedule but this award was made using GSA Schedule contract number [REDACTED].
- We disagree with the auditor's finding that [REDACTED] was awarded for an amount higher than the amount briefed to Management. Management approved an award amount of \$273,710 and the original order was valued at \$273,710.

- We disagree with the auditor's finding that [REDACTED] was issued weeks before it was approved by Management. Management approved the award on 8/8/07 and the contract was awarded on 8/9/07.

Finding #10 – Failure to Include Wage Determination

- The auditor included [REDACTED] as an award that required a wage determination. However, delivery orders do not require wage determinations since the prevailing wage determination is covered in the base contract.

Finding #16 – Contract Modifications are Incorrect or Not Documented

We disagree with the auditor's findings regarding missing modifications for [REDACTED]. There have been eight modifications issued under this contract. The modifications numbers are 0002, 0003, 0005, 0009, 0010, 0011, and 0013. All modifications under this contract were in the official contract file and reviewed by the auditors. As stated previously, Momentum skips modification numbers as modifications are processed. (Modifications 0001, 0004, 0007, 0008, and 0012 do not exist.)

▶▶ APPENDIX B: SUNTIVA REPORT