

## **EXECUTIVE DIGEST**

On October 23, 1989, the President signed into law the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 ("the Act"). Section 319 of the Act amended Title 31, United States Code, by adding a new section 1352 entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions". Section 1352 took effect with respect to Federal contracts, grants, loans, cooperative agreements, loan insurance commitments and loan guarantee commitments that were entered into or made more than 60 days after the date of enactment of the Act, i.e. December 23, 1989.

On December 20, 1989, the Office of Management and Budget (OMB) issued interim final guidance entitled "Government Guidance for New Restrictions on Lobbying " as required by 31 U.S.C. § 1352.

On January 30, 1990, the Federal Acquisition Regulation (FAR) Secretariat issued Federal Acquisition Circular (FAC) 84-55 to implement section 319 of the Act. FAR Subpart 3.8, "Limitations on the Payment of Funds to Influence Federal Transactions", FAR 52.203-11, "Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions" and FAR 52.203-12, "Limitation on Payments to Influence Certain Federal Transactions", provide for implementation of, and compliance with, 31 U.S.C. § 1352. Federal agencies are required to prepare semi-annual reports to Congress as to the status of compliance with the Act.

The Office of Inspector General (OIG) performed an audit of the compliance with, and effectiveness of, requirements related to limitation on use of appropriated funds to influence certain federal contracting and financial transactions, 31 U.S.C. § 1352. Overall the auditors determined the Commission was in compliance with provisions of 31 U.S.C. § 1352 and the Commission established adequate controls to ensure certification and disclosure of payments made to influence certain federal transactions. However, the auditors identified that the required semi-annual report to have been filed by November 30, 1994 had not been filed. Responsible FCC officials were notified and took appropriate action to correct this oversight.

In compliance with provisions of 31 U.S.C. § 1352 the OIG submitted to the Secretary of the Senate and Clerk of the House of Representatives the required annual evaluation of FCC compliance with the Act (See Attachment 1).

Since the November 1994 semi-annual reports have been issued, no recommendations are contained in this report.

On March 16, 1995, the Managing Director was provided a draft version of this report for his review and comment. The Managing Director in his response dated March 24, 1995, (see Appendix 1) did not have any comments to this report.

## **AUDIT OBJECTIVES**

The objectives of this audit were to:

- Determine what types of activity (contracts, cooperative agreements, etc.) at the Commission fall under 31 U.S.C. § 1352 requirements;
- Determine what controls and/or procedures have been established to ensure compliance with the 31 U.S.C. § 1352, OMB Guidance and FAR requirements; and,
- Assess the adequacy of FCC controls and/or procedures in place to assure compliance with 31 U.S.C. § 1352, OMB Guidance and FAR requirements.

## **AUDIT SCOPE**

Audit fieldwork was performed at headquarters in January 1995. The scope of the audit entailed making inquiries of key personnel to ascertain what controls and/or procedures regarding Section 1352, FAR 52.203-11, and FAR 52.203-12 were in place. Inquiries were also made to officials at OMB on the Certification and Disclosure of payments. We reviewed and analyzed all available contract files to determine whether required procedures were being followed.

The audit was performed in accordance with Government Auditing Standards.

## **BACKGROUND**

On October 23, 1989, the President signed into law the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1990 ("the Act"). Section 319 of the Act amended Title 31, United States Code, by adding a new section 1352 entitled "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions." Section 1352 took effect with respect to Federal contracts, grants, loans, cooperative agreements, loan insurance commitments and loan guarantee commitments that were entered into or made more than 60 days after the date of enactment of the Act, i.e. December 23, 1989.

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31 U.S.C. § 1352 requires, among other things, that:

1. None of the funds appropriated by any Act may be expended by the recipient of a Federal contract, grant, loan or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of any Federal contract, the making of any Federal grant, Federal loan, cooperative agreement, or the extension, continuation, renewal, amendment or modification of any Federal contact grant, loan or cooperative agreement.
2. Each person who requests or receives a Federal Contract, grant, or cooperative agreement in excess of \$100,000, or a loan of Federal commitment to insure or guarantee a loan in excess of \$150,000 must disclose lobbying with other than appropriated funds.
3. The head of each agency must submit a semi-annual report to the Secretary of the Senate and the Clerk of the House of Representatives. These reports must include information with regard to any payments made and must be filed no later than May 31 and November 30 of each year.

4. The Inspector General shall prepare and submit to Congress each year an evaluation of the compliance by the agency with, and the effectiveness of, the requirements imposed on the agency, persons requesting or receiving Federal contracts, grants, loans or cooperative agreements from the agency, and persons requesting or receiving from that agency commitments providing for the United States to insure or guarantee loans.

## AUDIT FINDINGS

### The Commission Was In Overall Compliance With Provisions of 31 U.S.C. § 1352

Auditors contacted officials responsible for ensuring compliance with Section 1352, Title 31 USC and obtained copies of the 1993 & May, 1994 semi-annual reports (See Attachment 2) sent to the Secretary of the Senate and the Clerk of the House of Representatives. Section 1352, Title 31 USC requires that the head of each agency submit a semi-annual report to the Secretary of the Senate and the Clerk of the House of Representatives. The reports are to be submitted by May 31 and November 30 of each year. The Agency is to include in its report any information on companies which disclose they have made or have agreed to make payments to influence or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress.

Auditors determined the Commission met the 1993 semi-annual reporting requirements under section 1352, but did not for 1994. Auditors were informed that the November 1994 reports, to have been sent to the Secretary of the Senate and the Clerk of the House of Representatives, were not sent due to an administrative oversight. Auditors notified responsible FCC officials of this condition. Subsequently, the auditors determined that responsible officials had taken appropriate actions to issue the November 1994 semi-annual reports (See Attachment 3).

### The Commission Established Adequate Controls to Ensure Certification and Disclosure of Payments Made to Influence Certain Federal Transactions.

The Commission has incorporated certifications in contracts which are over \$100,000 stating that no federal appropriated funds have been, or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf. FAR 52.203-11 requires this certification be signed by the offeror. Auditors found that this requirement was fully complied with.

FAR 52.203-11 also requires the offeror to complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contacting Officer, for any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) that have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress on his or her behalf in connection with the solicitation.

Auditors obtained copies of all 13 FCC contracts which exceeded \$100,000. All 13 contracts included the offerors certification. None of the 13 contracts reviewed included OMB standard form LLL, Disclosure of Lobbying Activities, for payments or payments to be made to influence certain Federal transactions. Thus, none of the contractors have disclosed any payments for lobbying purposes as defined under FAR 52.203-11.

