

Bob Dole



NEWS

U. S. SENATOR FOR KANSAS

FROM:

SENATE REPUBLICAN LEADER

FOR IMMEDIATE RELEASE
DECEMBER 22, 1992

CONTACT: WALT RIKER
(202) 224-5358

WALSH'S WASTE EXPOSED

**NEW GOVERNMENT DOCUMENTS SHED LIGHT ON WALSH'S WASTEFUL SPENDING;
"IRREGULARITIES, MISMANAGEMENT & MALFEASANCE" MARK \$35 MILLION
PARTISAN PROBE; TAB FOR "MOCK TRIAL" HITS \$52,600**

WASHINGTON -- Senate Republican Leader Bob Dole (R-Kansas) today said new information reveals "a troubling pattern of taxpayer-funded irregularities, mismanagement and malfeasance" in the office of Independent Counsel Lawrence Walsh.

Documents provided to Dole by the General Accounting Office and the Administrative Office of the U.S. Courts reveal that Walsh disregarded proper procedures in staging an unprecedented \$52,600 taxpayer-funded mock trial of former Defense Secretary Caspar Weinberger, and that Walsh requested reimbursement for between \$44,000 and \$78,000 in unallowable lodging and meal expenses that the GAO called "inconsistent with laws and regulations."

"These reports demonstrate more of the hanky-panky we have come to expect from Lawrence Walsh's high-cost, low-result persecution of Republicans," Dole said. "If he can get away with this kind of disregard for procedures designed to protect the American taxpayer, it's no wonder he's kept his office in business for more than six years in his relentless partisan political pursuit which has done little but ruin the lives of several administration officials.

"In my view, enough is enough. Mr. Walsh has had his hand in Uncle Sam's pocket to the tune of \$35 million. Who else could waste so many tax dollars and get away with it? When it comes to nailing Republicans at any price, it appears there is a double standard," Dole added.

Copies of the documents sent to Senator Dole by the Administrative Office of the U.S. Courts and the General Accounting Office are attached.

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L. RALPH MECHAM
DIRECTOR

JAMES E. MACKLIN, JR.
DEPUTY DIRECTOR

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS

WASHINGTON, D.C. 20544

CLARENCE A. LEE, JR.
ASSOCIATE DIRECTOR
FOR MANAGEMENT AND OPERATIONS

December 21, 1992

Honorable Bob Dole
United States Senate
Washington, D.C. 20510

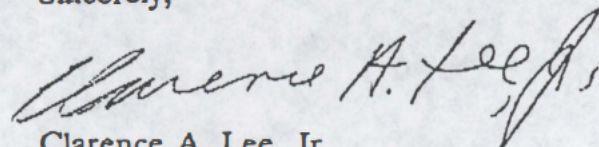
Dear Senator Dole:

This responds to your letter to Director Mecham dated December 21, 1992, regarding the procurement of services to conduct a mock trial for the Office of Independent Counsel Lawrence E. Walsh. Your letter requests our opinion and any other relevant information concerning the appropriateness and legality of the expenditure of public monies for a mock trial under existing funding and procurement standards.

Initially, this agency did not challenge the availability of public monies to conduct a mock trial that would assist a Federal prosecutor in a particular prosecution. It was our view that the expenditure of public monies for this purpose was arguably a "necessary expense" for which appropriated funds were available and that it was not appropriate for this agency to substitute its judgment for that of the Independent Counsel.

Although this agency proceeded to issue a contract for the services because of the urgency of the request, I advised the Independent Counsel by letter dated December 18, 1992, that this agency perceived several matters that required attention for future procurements. Enclosed with the letter was a discussion of those matters. Both the letter and the enclosure advised that the Office of the Independent Counsel take appropriate steps to prevent a recurrence of the discussed problems in future procurements. For your information, I enclose a copy of my letter and the enclosure.

Sincerely,



Clarence A. Lee, Jr.
Associate Director

Enclosures

cc: Honorable Lawrence E. Walsh

A TRADITION OF SERVICE TO THE FEDERAL JUDICIARY

L. RALPH MECHEAM
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WASHINGTON, D.C. 20544

CLARENCE A. LEE, JR.
ASSOCIATE DIRECTOR
FOR MANAGEMENT AND OPERATIONS

December 18, 1992

Honorable Lawrence E. Walsh
Office of Independent Counsel
555 Thirteenth Street, N.W.
Suite 701-West
Washington, D.C. 20004

Re: Request to Enter Contract with Public Response Associates, Inc.

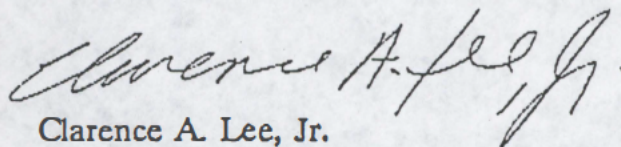
Dear Judge Walsh:

This letter is in regard to your request of December 2, 1992, that we award a formal contract to Public Response Associates to provide jury consultant services. Let me assure you at the outset that we are acceding to your request because you have stated an immediate need for the services, and we certainly do not want to interfere with the work of the Office of Independent Counsel. We, therefore, have expedited the preparation of your contract.

At the same time, we have identified some matters to which more attention should be given in future procurement actions. For your information, we enclose a brief discussion of these matters.

If you have any questions, please feel free to call me at 273-3015.

Sincerely,



Clarence A. Lee, Jr.
Associate Director

Enclosure

Jury Consultant Contract for the Office of the Independent Counsel

In view of the recent Comptroller General's report discussing the lack of adequate guidance and controls to assure compliance with applicable laws and regulations, the timing of the request for a contracting action reflects a failure to coordinate the development of an appropriate acquisition strategy with Administrative Office procurement officials in a timely fashion. The letter from the Office of the Independent Counsel, dated December 2, 1992, indicates that office was aware of its requirements for jury consultant services since at least the early part of November and has already proceeded with performance. We understand and sympathize that the Office of the Independent Counsel lacks familiarity with Federal contracting principles and is still becoming acclimated with these requirements. It is difficult, however, to conceive a valid reason for the failure to advise Administrative Office procurement officials of those requirements in a timely fashion. Unfortunately, the manner in which this request for contracting action was presented is the least susceptible to meaningful review with respect to applicable procurement statutes and regulations.

Apart from problems with the timing of the request, we find some substantive issues as well. In discussing these issues, we apply statutes and regulations that apply to Executive agencies because we understand that procurements for the Office of the Independent Counsel generally should comply with such laws. Even if we were to apply the procurement statute with which the Judiciary must comply in its own procurements, the result would not be significantly different.

Because this contract will have a value in excess of \$25,000, applicable procurement statutes require the use of formal competitive procedures in accordance with 41 U.S.C. Subchapter IV, unless (as appears pertinent here) the circumstances of the procurement satisfy the conditions set forth in 41 U.S.C. § 253(c) for the use of noncompetitive procedures. In order to invoke an exception that authorizes the use of noncompetitive procedures, these procurement statutes, at 41 U.S.C. § 253(f), further require that the contracting officer justify the use of such procedures and certify the accuracy and completeness of the justification. Implementing regulations in the Federal Acquisition Regulation (FAR), 48 C.F.R. Subpart 6.3, prescribe policies and procedures for the use of noncompetitive procedures, and clearly provide, at FAR § 6.303-1(b), that requirements personnel are responsible for providing and certifying as accurate and complete necessary data to support their recommendation for other than full and open competition.

While you have requested that this agency enter into a contract with a directed source, Public Response Associates, your office has failed to provide much of the information that would be necessary to justify such an award. Specifically, there are certain enumerated circumstances that permit a sole-source award under the authority of 41 U.S.C. § 253(c)(1), which allows noncompetitive procedures when there is only one responsible source and no other type of services will satisfy your needs. In order to proceed with any sole-source award, a justification is required stating the needs of

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the agency, an identification of the statutory exception from the requirement to use competitive procedures, a determination that the anticipated costs will be fair and reasonable, a description of the market survey conducted or a statement of the reasons why a market survey was not conducted, a list of the sources that expressed an interest in the procurement, and a statement of the actions, if any, the agency may take to remove or overcome a barrier to competition in future procurements for such needs. The content of such a justification is fully outlined in 41 U.S.C. § 253(f)(3) and FAR § 6.303.

Both the Competition in Contracting Act and the Federal Acquisition Regulations explicitly state that the use of noncompetitive procedures are not justified on the basis of a lack of advance planning by the requiring activity. 41 U.S.C. § 253(f)(5)(A), 48 C.F.R. § 6.301(c). Moreover, unusual and compelling urgency may justify a noncompetitive award, see 41 U.S.C. § 253(c)(2), but does not in itself justify a sole-source award. An agency must request offers from as many potential sources as is practicable under the circumstances. See 41 U.S.C. § 253(e).

We recognize that your office obtained quotations from three vendors. It is not clear to us whether such action was an attempt at a market survey or a competition. If it was the former, your letter fails to explain whether the three sources were the only ones reasonably available within the time limitations imposed upon you by your litigation schedule. If it was the latter, such competition would be sufficient only in the event that the value of the procurement did not exceed \$25,000. See 41 U.S.C. § 253(g) and FAR Part 13. Your total contract amounts to \$52,600. A proposed contract for an amount above \$25,000 may not be divided into several contracts in order to use small purchase procedures. See 41 U.S.C. § 253(g)(3).

There also appears to be some ambiguity as to when the contractor expects payment. As part of the proposal which was accepted by Mr. Brosnahan, the contractor agreed to pay the hotel for all services, including rooms and food, used during the simulation, which is to take place beginning Friday evening, December 11. The proposal further states that the initial draft report would be delivered on December 10, 1992, and the final report delivered on December 20, 1992. On the attached invoices, however, the contractor has stated that the entire amount is required on or before December 10, 1992 (prior to the simulation), which includes the expenses for the simulation, and your office has requested approval to pay these expenses (\$20,000).

The Administrative Office of the United States Courts is prohibited from making any advance payments, with a very limited exception for publications, 31 U.S.C. § 3324; although, an executive agency is authorized, pursuant to 41 U.S.C. § 255, to make advance payments under contracts provided certain restrictions are followed. The contractor must provide adequate security in the form of a lien in favor of the