

14 December 2009
Imaging and Publishing Support, CIA
Washington, DC 20505

To: Greene, ADM

Mr. William Borchardt
Executive Director for Operations
U.S. Nuclear Regulatory Commission
One White Flint North
11555 Rockville Pike
Rockville, MD 20852-2738

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Dear Mr. Borchardt,

The purpose of this letter is to introduce myself as the Chief of Customer Service for the Central Intelligence Agency's Imaging and Publishing Support (IPS). My name is Elizabeth Anthony; I have 24 years of service at the CIA and have served in a variety of support positions across the agency. Prior to the Agency I served in the U.S. Army with the Signal Corps.

IPS services include conventional and digital printing, web publishing, graphic design, multimedia, paper-to-digital archive conversion, to name a few. We process material ranging from unclassified to top secret, including the President's Daily Brief, protecting the confidentiality of your most sensitive data is our first priority. We operate 24 hours a day, 6 days a week to meet our customer's requirements.

Imaging & Publishing Support has served the CIA for over 50 years, and transitioned into a CIA Working Capital Fund (WCF) business in 2000. We serve the entire Intelligence Community and a wide array of other Government agencies (OGA). The provisions of the Economy Act, Title 31 of the U.S. Code, Section 1535 (a) allow your organization to utilize IPS services. The Director of OMB in Memorandum M-02-07, states that OGAs "did not have to use GPO, and should obtain printing services through the best quality, cost, and time of delivery". IPS would like to extend our services and commitment to excellence to your organization.

I invite you, your colleagues, or your designee to visit the CIA for a tour of our printing facility and to learn more about our services and capabilities. Please contact me on 703-482-3521 or via email at elizara@ucia.gov to schedule a visit.

Respectfully,



Elizabeth R. Anthony

Attachment

Template: EDO-001

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The 106th Congress established a Central Services Program within the CIA in US Code Title 50 (War and National Defense) subsection 403u:

The Director may carry out a program under which elements of the Agency provide items and services on a reimbursable basis to other elements of the Agency, nonappropriated fund entities or instrumentalities associated with the Agency, and other Government agencies.

* * * * *

The Economy Act authorizes Federal agencies to place an order with other Federal agencies if:

- 1) amounts are available;
- 2) the head of the ordering agency or unit decides the order is in the best interest of the United States Government;
- 3) the agency or unit to fill the order is able to provide or get by contract the ordered goods or services; and
- 4) the head of the agency decides ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise. (31 U.S.C. 1535(a)).

However, it is clear that this is not mandatory. For example, GAO has ruled that in making the determination that placing an order with another government agency is cost-effective and more convenient,

"Even if the determination is made however, the authority to use the Economy Act is permissive rather than mandatory." (Government Accountability Office, *Principles of Appropriation Law, Volume 4*, GAO O1-179SP, Second Edition).

But what about the GPO Printing Mandate?

GPO authorizing legislation (44 U.S.C. 501) *does* mandate that all executive branch printing be done by or in coordination with GPO.

Legislation passed in 1968 specifies that:

"All printing, binding, and blank-book work for Congress, the Executive Office, the Judiciary, other than the Supreme Court of the United States, and every executive department, independent office and establishment of the Government, shall be done at the Government Printing Office, except—

- 1) classes of work the Joint Committee on Printing considers to be urgent or necessary to have done elsewhere; and
- 2) Printing in field printing plants operated by an executive department, independent office or establishment, and the procurement of printing by an executive department, independent office or establishment from allotments for contract field printing, if approved by the Joint Committee on Printing." (44 U.S.C. 501)

This legislation has been subject to fierce Congressional executive branch debate

For the past two decades, there has been a continuing dispute between the Congress and the executive branch concerning this provision. A 1983 Supreme Court decision [Clw.da] which invalidated Congress' legislative veto authority prompted the executive branch to seek more independence in printing policy. A series of legal opinions issued by the Office of Legal Counsel (OLC) in the Department of Justice questioned the legality of 44 U.S.C. 501 (the GPO law cited above).

"OLC found that there was no statutory authority to support `the promulgation of mandatory guidelines or the compulsory subordination of executive management discretion to a committee of Congress.' Moreover, said the opinion, even if such statutory authority were deemed to exist, the regulations `would represent a constitutionally impermissible legislative trespass upon the rights, duties, and responsibilities of the Executive Branch ...' [under the Buckley and Chada decisions]. Congressional Research Service, *Public Printing Reform: Issues and Actions*) Report 98-687, April, 2001.

Other subsequent OLC opinions have supported this opinion. For example, in 1996 OLC stated that the law "... violate[s] constitutional principles of separation of powers", that the law was "unconstitutional and, therefore, inoperative" and that "executive branch departments and agencies are not obligated to procure printing by or through GPO".

In May 2002, the Director of OMB issued Memorandum M-02-07 to heads of departments and agencies encouraging them to obtain printing from sources other than GPO. The memorandum specifically cited the 1996 OLC opinion mentioned above. It specifically stated that executive branch agencies did not have to use GPO, and should obtain printing services through the best quality, cost, and time of delivery. The memo does not rule out GPO: it states that if agencies find that GPO provides the best value base on the three criteria above, they should continue to use GPO. The memorandum specifically allows for in house printing.

In response, Congress enacted Public Law 107-240, section 4 of which reads as follows:

"No funds appropriated under this joint resolution or any other Act may be used—

"(1) to implement or comply with the Office of Management and Budget Memorandum M-02-07, 'Procurement of Printing and Duplicating through the Government Printing Office', issued May 3, 2002, or any other memorandum or similar opinion reaching the same, or substantially the same, result as such memorandum; or

"(2) to pay for the printing (other than by the Government Printing Office) of the budget of the United States Government submitted by the President of the United States under section 1105 of title 31, United States Code." P.L. 107-240, section 4(b)."

Although President Bush signed the Continuing Resolution, he accompanied it with a signing statement which specifically expressed his opinion that the above provision violated the constitutional principles of separation of powers, and was, therefore, inoperative.

On October 18, 2002, Robert C. Byrd, Chairman of the Senate Appropriations Committee, asked the Government Accountability Office (GAO) about this provision of law. The GAO response is interesting: they are careful to state that "... it is neither our role nor our province to opine on or adjudicate the constitutionality of legislation passed by the Congress and signed by the President." This theme is reiterated throughout the opinion. However, given that the principle that the law is constitutional, GAO found that the language as stated in PL 107-240 was unambiguous: they conclude that the since the law precludes the use of appropriated funds to implement or comply with Memorandum M-02-07, or to print the President's budgets other than through GPO, an administrative action contrary to section 117 constitutes a violation of the Antideficiency Act, and will result in certifying and disbursing officer liability.

On October 22, 2002, the Office of Administration in the White House asked the OLC for an opinion of the constitutionality of the provision. The OLC reiterated its previous opinion that the law is unconstitutional. But it went even further:

"Finally, we note that executive branch officers would face no realistic risk of criminal or civil liability for entering into contracts consistent with our opinion (and in derogation of the amended Continuing resolution)."

This is because

"...only the Department of Justice could bring civil or criminal actions against such officials, and the actions of the Department of Justice would necessarily be in accord with the President in his signing statement [see above and the position of this Office]."

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