



United States  
General Accounting Office  
Washington, D.C. 20548

Office of Special Investigations

B-282118

February 26, 1999

The Honorable Richard C. Shelby  
Chairman, Subcommittee on Transportation  
Committee on Appropriations  
United States Senate

Subject: Amtrak: Contracting Improprieties by Chief Engineer

Dear Mr. Chairman:

The Office of Special Investigations (OSI) received an allegation through GAO's FraudNET that Allison Conway-Smith, Amtrak's then and current Chief Engineer, improperly awarded a personal services consulting contract to her neighbor, Chris Leyenberger. When you learned of our investigation into this matter, you requested a written report of our results and asked that we address (1) whether the Chief Engineer followed Amtrak procedures and policies in hiring Mr. Leyenberger, including whether the Chief Engineer had the authority to hire Mr. Leyenberger; (2) whether the Chief Engineer provided inaccurate information to the Amtrak Board of Directors to obtain contract approval for Mr. Leyenberger's services and, if such information was provided, whether the Board was required to verify it; (3) whether any problems exist at Amtrak regarding the procurement process as it relates to consultant contracts in general; and (4) whether the Amtrak President/Chief Executive Officer (CEO) and Inspector General (IG) prefer a central purchasing department at Amtrak.

**Results in Brief**

Amtrak paid over \$2 million to Chris Leyenberger and the companies he represented for consulting work requested by Allison Conway-Smith, the Chief Engineer of Amtrak's Northeast Corridor Division. This work was requested without adequate planning and identification of Amtrak's needs. Instead of identifying the nature and estimated total cost of consulting work needed, determining the best way to obtain these services, and obtaining expenditure approval from an appropriate approving official, Ms. Conway-Smith informally asked her neighbor, Chris Leyenberger, to conduct interviews of her staff to obtain an understanding of how her office was organized so that he could serve as a personal services consultant to her.

From September 1996 to January 31, 1997, Mr. Leyenberger provided services on behalf of his employer, Bovis Construction Company, and the firm was paid although there was no written

contract during the period. By the time Mr. Leyenberger completed work in January, he had terminated his employment with Bovis and had created his own consulting firm, CenterLine Associates. In February and March 1997, Mr. Leyenberger provided services on behalf of the newly formed CenterLine Associates. Upon the conclusion of this work, Mr. Leyenberger joined two other former Bovis employees in a company called The Rise Group. At Ms. Conway-Smith's request, Mr. Leyenberger started providing consulting services in April 1997 on behalf of The Rise Group. On April 1, 1997, Ms. Conway-Smith approved the first of six monthly agreements with this company.

Ms. Conway-Smith's arrangements with all of these companies violated numerous Amtrak procurement requirements. In this regard, she failed to (1) prepare written justifications explaining why she needed outside consulting services; (2) prepare written agreements prior to the contractor's performance that detailed the nature, price, and duration of the work that was required; (3) prepare written sole-source justifications explaining the uniqueness of Mr. Leyenberger's services or capability; (4) ensure the reasonableness and acceptability of Mr. Leyenberger's rates via an audit by the Contract Audit Department or by comparing Mr. Leyenberger's rates with those proposed by other consultants; (5) obtain legal review; and (6) obtain expenditure approval by Amtrak management authorities.

In December 1997, with Mr. Leyenberger's total price exceeding \$1.2 million, Ms. Conway-Smith decided to enter into a \$1.3-million contract so that Mr. Leyenberger could continue providing consulting work at Amtrak. In accordance with Amtrak procedures, she requested that Amtrak's Board of Directors approve this contract. According to the Chief Engineer and Mr. Leyenberger, the written request to the Board contained misleading information so that the contract would be approved by the Board. The Board did not verify the accuracy of the statements and accordingly was not aware of the relevant inaccuracies. There is no requirement in Amtrak's bylaws for such verification. The Board then approved the contract on December 10, 1997. Under this contract, The Rise Group was required to provide consulting services from January 1998 to September 1998.

Shortly after receiving the Board's approval of the contract, Ms. Conway-Smith concluded in January 1998 that she no longer needed the firm's services. Nevertheless, she signed the contract with The Rise Group on March 24, 1998, causing the unnecessary expenditure of approximately \$1.3 million by Amtrak.

According to an August 1998 interim report issued by Amtrak's IG, 95 percent of Amtrak's consulting contracts reviewed by the IG did not have proper approval authority or proper written justification on file; and 90 percent were not properly approved. Of those contracts that were awarded on a sole-source basis, 92 percent that were reviewed did not have contractor-furnished pricing data audited as required.

According to the IG, unacceptable risks have been created by establishing a program management section to handle procurement actions within the Chief Engineer's Office. As a result, Amtrak's IG, Chief Financial Officer (CFO), and President/CEO told us they believe

that the procurement functions in the Chief Engineer's Office should be part of an Amtrak-wide procurement office.

### **Chief Engineer's Arrangement With Bovis Construction**

In September 1996, Allison Conway-Smith, Chief Engineer for Amtrak's Northeast Corridor Division, asked her neighbor Chris Leyenberger, who worked for Bovis Construction Company, to conduct interviews of her staff to obtain an understanding of how her office was organized so that he could serve as a personal services consultant to her. Ms. Conway-Smith did not conduct any competition to obtain these services or project the total amount or cost of work to be performed. In late February 1997, Mr. Leyenberger submitted invoices for \$134,426 to Ms. Conway-Smith's procurement staff on behalf of Bovis Construction Company.<sup>1</sup> These invoices covered work that had been performed and was to be performed by him and another Bovis employee from September 1996 to February 2, 1997. Upon receiving these invoices, a member of Ms. Conway-Smith's staff advised her that the invoices could not be paid because Amtrak did not have a written contract with Bovis Construction for consulting services. Ms. Conway-Smith directed the staff member to "make it happen" and to find a way to pay for these services.

Accordingly, in March 1997, Ms. Conway-Smith's staff prepared an award memorandum, stating that Ms. Conway-Smith had determined that "Bovis Construction is the only firm that is most capable of providing" consulting services. The memorandum explained that Bovis, at the invitation of the Chief Engineer, had become familiar with the Engineering Department's organization and responsibilities pertaining to the Northeast Corridor and had assessed whether the Department was capable of achieving the goals in Amtrak's strategic business plan. The memorandum also stated that after becoming familiar with the department, Bovis had recommended a preliminary work plan directed at refining the procurement process, providing program management training for staff, developing management information systems, and undertaking initiatives in the extension of staff. Thereafter, Ms. Conway-Smith's staff used a purchase order to pay Bovis.

### **Chief Engineer's Arrangement With CenterLine Associates**

At the end of January 1997, Mr. Leyenberger informed the Engineering Department that he had terminated his employment with this company and that he had created his own company, named CenterLine Associates. On February 1, 1997, Ms. Conway-Smith's staff prepared a sole-source justification for CenterLine, which stated that the Chief Engineer had determined that the "consulting firm, CenterLine Associates, is the only firm that is most capable of providing" necessary skills to provide the work that Amtrak needed. This work included, but was not limited to, facilitation in the areas of strategic planning, interdepartmental team

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<sup>1</sup> The Chief Engineer's procurement staff are members of her program management section. Their responsibilities include expediting and monitoring the Chief Engineer's Office procurements in addition to tracking all funds expended by the Office.

building workshops, and training program development; organization design and development; and business process reengineering. Ms. Conway-Smith's staff did not prepare a written agreement with CenterLine regarding the work referenced in the justification.

The company performed work for Ms. Conway-Smith from February 1, 1997, through March 1997; it billed Amtrak approximately \$81,201 for this work. On May 22, 1997, almost 4 months after CenterLine began working for Amtrak, an employee on Ms. Conway-Smith's staff prepared an award memorandum. The memorandum noted that the award "is made to CenterLine Associates in the amount of \$26,336 for the period February 1, 1997, to February 28, 1997." Even though CenterLine billed Amtrak for over \$54,865 for work, this memorandum covered only the work to be performed for February. It also provided the hourly rates that were obtained from two other consulting firms as well as CenterLine's rates. Although CenterLine's rates were significantly lower than those provided by the two other firms, we were informed by one of Ms. Conway-Smith's staff members that these companies were selected only because they historically had proposed higher rates than those proposed by CenterLine.

#### **Chief Engineer's Arrangement With The Rise Group**

In March 1997, Mr. Leyenberger informed Amtrak's Engineering Department that he was joining two other Bovis Construction employees who had created a company called The Rise Group. With the encouragement and approval of the Chief Engineer, The Rise Group started providing consulting services in April 1997. Ms. Conway-Smith entered into six professional service agreements with The Rise Group, having a total price of \$993,213. The first agreement, entered into on April 1, 1997, called for business process reengineering, strategic planning, training program development, and interdepartmental teambuilding workshop facilitation. The second agreement, entered into on July 9, 1997, covered work from June 1, 1997, to June 30, 1997. Under this agreement, The Rise Group was responsible for developing, coordinating, and facilitating initiatives in several areas, including safety and training, business planning and financial reporting, human resources, resource management, best practices, procurement, customer service, and document control.

The four subsequent agreements required The Rise Group to continue working on the prior initiatives. The third agreement, entered into on July 30, 1997, covered work performed from July 1, 1997, to July 31, 1997. The fourth agreement covered the period August 1, 1997, to August 31, 1997; however, it was not executed until August 30, 1997. The fifth agreement, entered into on October 20, 1997, covered the period of September 1, 1997, to September 30, 1997. The sixth agreement, covering the period October 1, 1997, to December 31, 1997, was not executed until December 5, 1997. No sole-source justification was prepared for any of this work.

#### **Failure to Adequately Plan the Procurement**

It is our view that Ms. Conway-Smith did not adequately plan the procurement and identify her needs. It is apparent that from the beginning, Ms. Conway-Smith did little or no planning. Instead, she asked Mr. Leyenberger to interview her employees to gain an understanding of

her office. Once he performed this task, he identified some broad areas on which he believed he could provide assistance to Ms. Conway-Smith. Ms. Conway-Smith never specified in a written agreement what work should be done in each area, any deliverables to be provided, or any time frames to follow. Nor did Ms. Conway-Smith project the total cost of the work to be performed. Instead, Ms. Conway-Smith hired the various firms for which Mr. Leyenberger worked on a piece-meal and, for the most part, exceedingly informal basis. Had Ms. Conway-Smith adequately planned the procurement and identified her needs at the beginning of the procurement process, she may have determined that the procurement should have involved a single contract instead of a series of separate engagements. If Ms. Conway-Smith had treated the work to be performed as involving a single procurement, she would have been required, as set forth in the next section, to obtain the Board's approval before Mr. Leyenberger began his work.

### **Violations of Numerous Amtrak Procurement Policies and Rules**

Amtrak is operated and managed as a for-profit corporation and is not a federal agency subject to the Competition in Contracting Act and Federal Acquisition Regulations.<sup>2</sup> Nevertheless, Amtrak has adopted numerous internal rules and policies that its personnel are required to follow in awarding contracts. Ms. Conway-Smith violated most of these rules and policies.

Section FI-16 of Amtrak's Procedures Manual, "Consultant and Other Personal Services," sets forth numerous requirements that should be followed when Amtrak hires persons to provide expert or professional advice. These rules apply regardless of whether the procurement is accomplished through competition or sole-source procedures. According to those provisions, Amtrak personnel must prepare (1) a written justification specifically demonstrating the need for specialized expertise or the need to supplement existing manpower; (2) a written agreement containing information about the title and description of the project, the service or end product, dates or duration of the engagement, and the contract price and payment information; and (3) a purchase requisition. None of these documents were prepared for the work Bovis Construction and CenterLine did for Ms. Conway-Smith. Furthermore, while the first monthly agreement with The Rise Group was entered into prior to Mr. Leyenberger's performance, the four remaining agreements were not executed until after the work had been performed. In addition, there was no written justification explaining the need for The Rise Group's services or a purchase requisition.

Section FI-16 also provides that all consulting services must be obtained based on competitive bids unless a sole-source arrangement can be justified in accordance with Amtrak's procedures. Section MM-5.11 of the Procedures Manual, "Sole/Single Source Solicitation Approval-Non-NECIP Purchasing" requires each proposed noncompetitive purchase in excess of \$50,000 to be supported by a written conclusive and logical justification. It provides that it is not

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<sup>2</sup> J.D.J. Services, Inc., B-252085, Jan. 26, 1993, 93-1 CPD ¶ 68.

"sufficient merely to conclude generally that a source is uniquely qualified. . . . In the event a unique capability is claimed, specific details must be furnished defining such uniqueness. Mere preferability or desirability is not sufficient. . . ."

Exhibit "D," section 3 (Modified) of the Amtrak Purchasing Manual, "Request for Sole Source Procurement" sets forth the requirements for approval of sole-source procurements requested by the Engineering Department. According to that document, every proposed sole-source arrangement must be based either on a determination that only one responsible source can meet the Chief Engineer's requirements or that the need for the services is of such a compelling urgency that Amtrak would be seriously injured unless competition is limited. Under the process established in Exhibit D, full and open competition is not required for procuring professional services if the responsible source has submitted an unsolicited research proposal that (a) demonstrates a unique and innovative concept or unique capability, (b) offers a concept or services otherwise not available to Amtrak, and (c) does not resemble the substance of a pending competitive acquisition. The Exhibit also provides that follow-on contracts for continued services from the original source are available when it is likely that an award to any other source would result in (a) substantial duplication of cost to Amtrak that is not expected to be recovered through competition or (b) unacceptable delays in fulfilling the organizational requirements.

None of the consulting services provided by the firms for which Mr. Leyenberger worked were obtained through competition. Moreover, no sole-source justification was prepared prior to the time Mr. Leyenberger began his work for Amtrak. About 6 months after Mr. Leyenberger began working at Amtrak, an award memorandum was prepared that stated that Bovis Construction was the "only firm most capable" of providing consulting service. As support for this statement, the justification referred to experience that Mr. Leyenberger had gained while performing the very work for which the sole source was written. Clearly, it was inappropriate to base the sole-source justification on such experience.

Furthermore, there was no adequate sole-source justification for the work performed by CenterLine and The Rise Group. The sole-source justification memorandum for CenterLine, dated February 1, 1997, merely provided, without explanation, that it was the "only firm that is most capable" of performing the work; and no sole-source justification was prepared for The Rise Group. Ms. Conway-Smith never cited information in support or ever asserted that Mr. Leyenberger was uniquely capable or that his services would save Amtrak money or were needed because competition would result in unacceptable delay. Indeed, we asked Ms. Conway-Smith why she entered into a sole-source arrangement with Mr. Leyenberger, and she was not able to give us any cogent reason for hiring him this way.

In addition to these improprieties, Ms. Conway-Smith circumvented Amtrak's policy of ensuring the reasonableness of the proposed prices of its contractors. Amtrak's procedures set forth in section FI-19 of the Procedures Manual, "Audit of Noncompetitive Procurements," requires the Contract Audit Department to audit all contractor-furnished pricing data resulting from a proposal in excess of \$25,000 unless, for example, the contractor's price can be compared reasonably to quotations received for similar work. Even though the award memoranda for Bovis stated that an audit would be requested, no pricing data were

submitted or audit done for Bovis. While Ms. Conway-Smith's staff compared CenterLine's and The Rise Group's consulting rates with those received from two other consulting firms, these firms were not objectively selected. Rather than randomly selecting quotations from consulting firms, Ms. Conway-Smith's staff specifically selected consulting firms that historically had higher rates than those offered by CenterLine and The Rise Group. Thus, Amtrak had no objective way of determining that the price paid for Mr. Leyenberger's services was fair and reasonable.

Finally, Ms. Conway-Smith ignored the approval process required under Amtrak's procedures. Section FI-12 of Amtrak's Procedures Manual, "Purchase and Expenditure Approval Authorizations," provides that a proposed consulting arrangement may not be funded unless there is an appropriate review and approval of the proposed expenditure. The specific approving authority is determined by the amount of the proposed requisition. Under FI-12, Ms. Conway-Smith possesses no approving authority for consulting services. Management committee members approve contracts up to \$10,000; and the President of Amtrak approves expenditures up to \$199,999. Those over \$200,000 require approval from Amtrak's Board of Directors. Here, the invoices from Bovis totaled \$134,426; from CenterLine, \$81,201; and the six monthly agreements with The Rise Group, \$993,213. Ms. Conway-Smith could not approve any of these expenditures; rather approval should have been obtained either from the President of Amtrak or the Board of Directors. Had Ms. Conway-Smith treated the work to be performed as involving a single procurement, she would have been required to obtain the Board's approval before Mr. Leyenberger began his work.

Moreover, each requisition for consulting work must be sent to Amtrak's Law Department for legal review and approval to ensure compliance with all of Amtrak's procurement requirements. No requisitions were prepared for any of the arrangements involving Mr. Leyenberger, and no documentation was sent to the Law Department.

### **Inaccurate Information Provided to Board of Directors by Chief Engineer**

Sometime after the work had been performed under the sixth monthly agreement with The Rise Group, Ms. Conway-Smith determined that she would need additional work from The Rise Group. Because the amount of the contract was estimated to be over \$200,000, Ms. Conway-Smith sought Amtrak Board of Director approval of the proposed contract. The Board approved The Rise Group's \$1.3-million contract on December 10, 1997, for work to be performed from January to September 1998.

The Chief Engineer advised us that she prepared an executive summary for the Board's review in approving the contract and admitted that the summary was misleading. Mr. Leyenberger assisted in the preparation of this summary pursuant to her request and stated that the executive summary contained statements that stretched the truth in order to obtain the Board's approval of the contract. In this regard, the executive summary inaccurately described The Rise Group's contractual history with Amtrak as well as the nature of the services that the company had provided. In addition, the executive summary overstated the amount of the savings that were supposed to result from The Rise Group's

work and other reengineering projects at Amtrak. While Mr. Leyenberger had projected that Amtrak would save \$4 million in fiscal year 1998 in part from work by The Rise Group, he told us that he did not have any basis to support this projection. Our investigation also determined that the Board was never informed that The Rise Group had received \$993,213 for consulting services provided from April to December 1997.

The Board of Directors did not verify the accuracy of the statements and accordingly was not aware of the inaccuracies. There is no requirement in Amtrak's bylaws for such verification.

### **Chief Engineer's Acceptance of Unnecessary Services**

On March 24, 1998, Ms. Conway-Smith signed the contract with The Rise Group that the Board had previously approved. However, she advised us that she knew as early as January 1998 that her office had "outgrown" the need for Mr. Leyenberger's consulting services. If she had not entered into this contract, she could have saved the \$1.3 million that The Rise Group ultimately received for its work under the Board-approved contract. Even after entering into the contract, she could have terminated the contract at any time after signing it, since the contract contained a termination clause that allowed termination at any time during the contractor's performance. If she had terminated the contract early in 1998, Amtrak would have been responsible only for reimbursing the contractor for the services that had been rendered as of the date of the termination.<sup>3</sup> Thus, even under this scenario, Amtrak could have substantially saved most of the \$1.3 million spent for The Rise Group's services. According to Ms. Conway-Smith, she did not take advantage of either of these options because she knew that Mr. Leyenberger had tasks that he wanted to complete.

### **Problems With Consulting Contracts Throughout Amtrak**

In August 1998, Amtrak's IG issued an interim audit report and assessment of Amtrak's "internal controls related to the engagement of consultants and providers of other personal services expenditures" for fiscal year 1997. The results of this audit were as follows:

"Finding 1: Amtrak does not have a reliable manner of determining the consulting costs of the Corporation. The costs currently charged to the account reserved for such costs per the Chart of Accounts are inconsistent with the definition of a consultant as provided in Amtrak's Procedures Manual.

"Finding 2. There appears to be a general overall lack of compliance with Amtrak policy for the engagement of consultants."

The interim audit report noted that 40 out of 42 contracts reviewed (95 percent) did not have proper justification on file for hiring individuals as consultants or other personal services in accordance with the requirements of FI-16. The audit also stated that 38 out of 42 contracts

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<sup>3</sup> The contract did not contain a clause entitling the contractor to termination costs.

reviewed (90 percent) were issued without proper approval authority in accordance with the requirements in FI-12. The report further concluded that out of 26 sole-source contracts requiring audit of contractor-furnished pricing data in accordance with FI-19, 24 contracts (92 percent) did not comply.

The IG noted that “. . . [t]he non-compliance we observed appears not to be associated with deficiencies in the policy, but a lack of discipline by Amtrak Corporate and SBU [Small Business Unit] management to follow established Corporate procedures.” He recommended that senior management insist on compliance with corporate policy and that an entity within Amtrak monitor levels of compliance and issue appropriate reports to management. He also recommended that Amtrak redefine the term “consultant” to be consistent with the definition provided in the Federal Acquisition Regulation.

### **Preference by Amtrak IG, President/CEO, and Corporate CFO for a Central Purchasing Department**

The IG told us that his office supports returning the responsibility over procurements involving the Engineering Department to a central purchasing department within Amtrak rather than permitting the procurements to be handled by the program management section in the Engineering Department. In his view, having a program management section within the Chief Engineer’s office creates unacceptable risks regarding consulting contracts. Foremost is management’s failure to adhere to Amtrak’s procurement policies and procedures when engaging individuals as consultants.

Then Acting President/CEO George Warrington (who is now the Amtrak President/CEO) told us that he is not convinced that having the program management section within the Chief Engineer’s Office is in the best interest of Amtrak. Mr. Warrington believes that Amtrak should require all purchasing to be done by one department, rather than in the disjointed manner in which purchasing is now done. Mr. Warrington stated that as President/CEO of Amtrak, he would take steps to ensure that all purchasing is centralized.

The CFO concurred with Mr. Warrington’s opinion and is now in the process of incorporating the program management section of the Chief Engineer’s Office into his office.

### **Methodology**

We conducted our investigation from July 1998 to January 1999. We reviewed Amtrak’s Financial Policies and Procedures and Material Management Policies that relate to hiring consultants or consultant firms, including “Consultant and Other Personal Services” (Amtrak FI-16); “Purchase and Expenditure Approval Authorizations” (Amtrak FI-12); “Audit of Noncompetitive Procurements” (Amtrak FI-19); “Purchasing, Receiving and Payment Procedure” (Amtrak MM-5.1); “Preparation of Material Requests “ (Amtrak MM-5.7); and “Sole/Single Solicitation Approval-Non-NECIP Purchasing” (Amtrak MM-5.11).

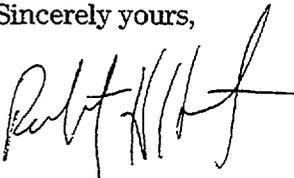
B-282118

After reviewing Amtrak's procurement policies and procedures found in FI-12, FI-16, FI-19, MM-5.1, MM-5.7, and MM-5.11, we also interviewed officials in Amtrak's Office of Inspector General, other cognizant officials within Amtrak, including the President/CEO, Allison Conway-Smith, and Chris Leyenberger.

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We will send copies of this letter to the Amtrak President/CEO and will make copies available to others on request. If you have any questions or need additional information, please contact Assistant Director Ronald Malfi at (202) 512-6722.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Robert H. Hast". The signature is fluid and cursive, with a prominent horizontal stroke at the end.

Robert H. Hast  
Acting Assistant Comptroller General  
for Special Investigations

(600489)

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