



Office of Inspector General
Survey Report

EPA'S CONTRACT MANAGEMENT INITIATIVES

E1YFB7-05-0002-7400070

September 30, 1997



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 30 1997

OFFICE OF
THE INSPECTOR GENERAL

MEMORANDUM

SUBJECT: Results of Survey of EPA's Contract Management Initiatives
Report No. E1YFB7-05-0002-7400070

FROM: Elissa R. Karpf *Elissa R. Karpf*
Deputy Assistant Inspector General
for External Audits

TO: Alvin M. Pesachowitz
Acting Assistant Administrator
for Administration and Resources Management

Attached is the survey report concerning the United States Environmental Protection Agency's (EPA) contracting activities. In February 1997, we began a survey, in conjunction with the Office of Acquisition Management (OAM) staff, of the effectiveness of EPA's recent contract management initiatives. The objective of our survey was to determine if the implementation of the recommendations contained in the Standing Committee's Report on Contract Management corrected the deficiencies identified in the report. Specifically, the team (1) reviewed sampled contracts to determine if the problem areas the Standing Committee cited still existed; (2) identified which of the recommendations made by the Standing Committee were implemented, and in what form; and (3) identified which corrective actions were validated. Also, as part of the survey, we evaluated whether contracts management should remain an Agency-level weakness under the Federal Managers' Financial Integrity Act (FMFIA).

Although EPA has taken positive steps to address contracts management deficiencies since the Standing Committee first met in 1992, potential vulnerabilities remain in the areas of (1) personal services, (2) contractor access to confidential or sensitive data, and (3) contractor conflicts of interest. We will conduct additional audit work in each of these areas to assess the potential vulnerabilities, and we will report our results by September 30, 1998. We also plan to perform audits in several other procurement-related areas, including use of the appropriate procurement vehicle; interagency agreements; procurement planning; and contract capacity. Each of these areas will ultimately impact the Office of Inspector General's overall assessment of EPA's contracting function. We recommend that EPA continue to include contracts management in its FMFIA report as an Agency-level weakness for fiscal 1997.



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Action Required

The purpose of this memorandum is to inform you of our survey results, areas of concern, and future audit plans. At a July 1, 1997 meeting to discuss the results of this survey, Agency management concurred with the recommendation to retain contracts management as an Agency-level FMFIA weakness. As a result, we are closing this report in our audit tracking system. No additional response is required by you or your staff.

We wish to express our appreciation for the assistance provided by the two OAM contract managers who participated as part of the audit team. If you or your staff have any questions concerning this survey, please contact Chuck Allberry, audit manager, at (312) 353-4222, or Debbie Baltazar, team leader, at (312) 886-3205.

Background

In June 1992, EPA's Standing Committee on Contracts Management (Standing Committee)--now called the Resource Management Committee (RMC)--made 40 recommendations to correct longstanding weaknesses in contracts management. The Standing Committee's report identified seven problem areas related to the Agency's contracts management:

- Personal services
- Contractor access to confidential or sensitive data
- Contractor conflicts of interest
- Contractors performing inherently governmental functions
- Loss of in-house expertise
- Control of contractors' costs
- Control of contractors' performance

In 1992, EPA first declared contracts management as a Presidential-level weakness under the Federal Managers' Financial Integrity Act (FMFIA).

In August 1995, the RMC Chair reported that 38 of the 40 recommendations were implemented, with the remaining 2 to be completed in 1997. EPA defined and planned to perform "validation" steps for each corrective action to determine if the actions were effective in correcting the deficiencies. In 1995, EPA downgraded its contracts management vulnerability to an Agency-level FMFIA weakness.

Details on the scope and methodology of our review are contained in Exhibit 1.

Survey Results

Since 1992, EPA has taken positive steps to address contracts management deficiencies. However, contracts management should remain an Agency-level FMFIA weakness for fiscal 1997. We found indications of potential vulnerabilities in the following three areas: (1) personal services, (2) contractor access to confidential or sensitive data, and (3) contractor conflicts of interest. These problem areas are discussed in detail later in the report. We did not find evidence of substantial problems in the other four areas that the Standing Committee identified, with the exception of EPA's controls over contractor costs. Specifically, as part of an Office of Management and Budget (OMB) requested audit, we found that (1) independent government cost estimates were not always properly prepared or effectively used for negotiating contract costs; and (2) substantial opportunities exist for EPA to issue more efficient and cost-effective completion form, fixed-price, and performance-based contracts, thus lessening its dependence on cost-reimbursable, level of effort type contracting mechanisms (see Report Number E1SKF7-04-0037-7100301, Chapters 2 and 3).

We reviewed 38 of the Standing Committee's 40 recommendations. The status of each of the recommendations is summarized in Exhibit 2. We did not review the two recommendations dealing with the Agency's management information systems (#37 and #40, page 15) that were scheduled for completion in 1997.

EPA implemented, in some form, 34 (89 percent) of the 38 recommendations. In some cases, although the original recommendation was not implemented exactly as proposed, the Agency took other actions intended to correct identified deficiencies. For example, the Standing Committee originally recommended using a checklist, included in its report, during the FMFIA process. Instead, the Office of Acquisition Management (OAM) issued a document called "Key Contracts Management Guiding Principles," for offices to use in preparing their annual assurance letters. We considered a recommendation implemented if EPA's actions substantially addressed the original recommendation's intent. In three cases (#25, #33, and #35, pages 14 and 15), the actions taken did not substantially implement the original recommendation or its intent. In the remaining case (#14, page 13), we were unable to determine if the recommendation was implemented because Agency-provided documentation was insufficient.

Of the 34 confirmed actions, EPA formally validated 9 (26 percent). In those cases where the Agency took other actions than originally recommended, validation steps for the new actions were not always developed or conducted. For many others, we were unable to determine why the validation steps, which EPA originally defined, were not done. Without completing the validation steps, EPA had no assurance that the recommendations were effective. However, we do not believe it is beneficial for EPA to complete the remaining validation steps now. Five years have passed since the Standing Committee issued its report. Circumstances have changed, both internal and external to EPA.

The Standing Committee report and EPA's subsequent actions have positively impacted contracts management. For example, there is a much greater awareness of contracting issues among EPA staff than there was in 1992. However, our recent audit work indicates contract management vulnerabilities may still exist. EPA would be better served by reassessing improvements needed in contracts management. The Office of Inspector General (OIG) has committed to performing audits during the coming year of the three areas in which we found indications of potential ongoing risk (see below) as well as other procurement-related areas. The results of this work will assist the Agency in this reassessment.

Three Areas of Potential Vulnerability

Personal services

Normally, the Government directly hires its employees under competitive appointment or other procedures mandated by civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws and OMB personnel ceilings. Employer-employee relationships between EPA and contractor personnel can also reduce the Project Officers' control

over contracts. For example, if someone other than EPA's designated representative (i.e., PO, WAM, etc.) directs or assigns work to the contractor, work outside the scope of the contract might be performed, creating legal problems.

The Federal Acquisition Regulation (48 CFR Subpart 37.104(b)) prohibits a personal service contract unless specifically authorized by statute. We reviewed 12 contracts specifically for personal service issues. We found indications of a personal service relationship between EPA and the contractor in 4 of those 12 cases (33 percent). We also found that a personal service relationship appeared to exist under one other contract which we originally sampled for the inherently governmental functions issue.

We identified these examples in regional, Office of Administration and Resources Management (OARM), Office of Research and Development, and Office of Policy, Planning, and Evaluation contracts. In each of the five cases, EPA and contractor staff were co-located. Indications that personal service relationships may have existed included: unauthorized EPA personnel directed contractor staff (68D30002); an EPA supervisor monitored contractor staff's daily activities (68W50024); and an EPA project officer provided technical direction to contractor staff other than the program manager (68D50048). In addition, we found contractor space was not clearly marked (68D30002, 68W50024, 68D50048); contractors did not identify themselves as such when answering phones (68D30002); and contractors did not wear identification badges (68W50024).

In response to our draft report, the Acting Assistant Administrator for Administration and Resources Management emphasized that our examples were not necessarily personal services, but indicators. He also pointed out two instances in which our description of specific problems needed clarification. We agree, as stated in our report, that the examples presented are indicators of potential personal services. Conclusions about the extent to which personal services actually exist will result from additional audit work now underway. We also revised our description of problems observed to clarify our concerns.

Contractor access to confidential or sensitive data

EPA obtains and maintains many types of confidential and sensitive data, including confidential business information, enforcement-sensitive information, and Privacy Act information. Since EPA uses contractors extensively, much of this information is accessed by those contractors in the normal course of performing their duties. Numerous laws and regulations dictate the proper handling of such data, including the Privacy Act, Trade Secrets Act, Federal Acquisition Regulation, and OMB Circular A-130. If sufficient controls are not in place over such information, EPA, as well as employees involved in allowing the contractor access, may be at risk for civil litigation and even criminal penalties.

We reviewed eight contracts in which a contractor had access to confidential or sensitive data, and found concerns with two of these contracts (68W10055 and 6W0567NASA¹). In the first case, a contractor was operating EPA's Integrated Contracts Management System, which allowed the contractor to access other contractors' confidential business information, including potential competitors'. In the second case, a contractor was assisting EPA in conducting Equal Employment Opportunity investigations, which required access to Privacy Act Information. However, EPA did not require contractor personnel to sign confidentiality agreements.

In addition to the eight contracts which we specifically evaluated for data access problems, we also identified, but did not have time to review in detail, two cases which may also contain related problems. In one (68W40021), an enforcement support contractor was asked to conduct an ability-to-pay analysis of a company that EPA is pursuing enforcement action against. The company whose financial information was being reviewed may not have been properly notified of its release to a contractor. In the second case (D.W. 47945609-01), EPA had obtained facilities management and programming support through an interagency agreement with the General Services Administration (GSA). GSA, in turn, provided the services through two existing contracts. Although the contractor employees had access to confidential data, EPA employees had no knowledge of what, if any, confidentiality provisions existed in the GSA contracts.

Contractor conflicts of interest

An organizational conflict of interest exists when conflicting roles might (1) bias a contractor's judgment or (2) provide an unfair competitive advantage. Potential conflicts of interest include: (1) an EPA contractor having a business relationship (parent, subsidiary, client) with a company that is regulated by EPA; (2) a contractor that helps EPA define its requirements, develop specifications for an upcoming procurement, and then competes for the procurement; and (3) a contractor that is providing advice or assistance to EPA on a matter that will directly affect the contractor. EPA relies on contractors to assist with almost all aspects of the Agency's work, from developing regulations and policies to supporting its enforcement efforts. It is vital that the Agency be assured that its contractors are providing unbiased opinions, not influenced by other interests.

We reviewed seven contracts to assess EPA's procedures for recognizing and dealing with contractor conflicts of interest. Although we did not identify any specific unresolved conflicts of interest, we have concerns over (1) EPA's heavy reliance on contractors' self reporting of potential conflicts of interest, (2) EPA's limited efforts to assess the implementation of contractors' conflict of interest plans, and (3) the existence of several "cradle to grave" contracts, that may allow the same contractor to help EPA both define and implement requirements.

¹This item was actually a purchase order and not a contract. However, we included it in our review because the issue of controls over access to data still applied.

EPA does not proactively search for potential conflicts of interest. Instead, it relies on contractors to self-report potential conflicts of interest. In most instances, the contractor decides whether a particular situation qualifies as a potential conflict of interest. If the contractor concludes that no conflict exists, it is likely EPA is never made aware of the specific facts of the case. EPA, therefore, has no way of challenging or disagreeing with a contractor's determination.

EPA often requires a contractor to develop a conflict of interest plan. This document defines the method the contractor will use to identify and resolve potential conflicts of interest. Although EPA reviews these written plans as part of the contract award process, EPA rarely examines the implementation of these plans to ensure they are effective. In one instance in which EPA did review the implementation of a contractor's conflict of interest plan, EPA concluded that potential conflicts could go undetected.

In one contract we reviewed (68W50034), the contracting officer was concerned about a potential conflict of interest, because the program office wanted the same contractor that conducted the requirements analysis (under a different contract) to design and implement the system. Federal Acquisition Regulation Subpart 9.5 provides that an organizational conflict of interest can exist when "because of other activities or relationships...a person is unable or potentially unable to render impartial assistance or advice to the government...." The potential conflict of interest memorandum, prepared by OAM prior to contract award, stated that the main purpose of the Agency's requirement is to "acquire services that objectively recommend and independently verify and validate ADP and Telecommunications products, systems and potential services". The memo goes on to state that

"The Agency's main concern would be a firm who may be unable to objectively recommend or independently assess 'competitor' products or services, because these recommendations or assessments may directly or indirectly impact their firm's profitability. Thus, the Agency could be vulnerable to a firm recommending, steering or avoiding certain ADP products or services. This would cloud the objectivity of the Agency's decision-making process for acquiring products, systems or services."

Thus, by the contractor having performed the requirements analysis, the contracting officer determined it was an organizational conflict of interest, and the same contractor could not perform the design and implementation. However, according to the contract file, while there were other contractors available to perform the work, there was extensive debate between the program and contracting offices over the issue before the contracting officer's position prevailed. While the contracting officer succeeded in preventing a conflict of interest, we are concerned that the efforts of the program office may indicate their lack of understanding about conflict of interest issues.

EPA has many contracts that have a high risk of having potential conflicts of interest. For example, advisory and assistance contracts have been recognized as being particularly vulnerable. In fiscal 1996, EPA had 200 active advisory and assistance contracts. Because of this exposure to high risk contracts, we are concerned that EPA's heavy reliance on contractors to identify and report potential conflicts of interest may not provide adequate safeguards.

In response to our draft report, the Acting Assistant Administrator for Administration and Resources Management explained that contractors' self-reporting was the most practical and cost-effective way of identifying conflict of interest (COI) problems; monitoring the daily operation of every contractor's COI system would be cost prohibitive. He also stated that since EPA identified COI as an Agency level FMFIA weakness, EPA has selectively audited several contractor's COI procedures. He concluded that COI should not be an issue in a decision to maintain contract management as an Agency-level weakness given that EPA's "COI procedures are the most comprehensive within the Federal Government".

Our survey work was not intended to, and did not, reach final conclusions about EPA's COI procedures. Our survey work indicates that this is a high risk area of contract management. We found limited evidence that EPA audits the implementation of contractors' COI plans and were presented with no information to support that EPA's COI procedures are the most comprehensive in the Federal Government. Additional audit work planned during FY 98 will determine the adequacy and appropriateness of EPA's efforts to identify and resolve conflicts of interest.

Scope and Methodology

The survey was led by staff in the Office of Inspector General (OIG), Northern Audit Division. EPA's Office of Acquisition Management, the organization responsible for EPA's contracting function, assigned two experienced staff to the audit team. The OIG's Central, Financial, Headquarters, and Southern audit divisions provided fieldwork assistance related to contracts located in their geographic areas. We held a planning conference in Cincinnati, OH, on February, 19-21, 1997, and conducted fieldwork between January 21 and July 31, 1997. Our audit survey was conducted in accordance with Government Auditing Standards (1994 Revision).

In 1992, EPA's Standing Committee developed 40 recommendations aimed at improving longstanding weaknesses. The Standing Committee also designed specific steps to validate the effect of each recommendation. In August 1995, EPA reported it had implemented 38 of the 40 recommendations (#37 and #40 were scheduled for completion in 1997.)

To determine whether EPA implemented and validated these 38 recommendations, for each recommendation, we:

- contacted the individual listed as contact person in the August 1995 update; and,
- asked the contact person to provide documentation showing the implementation actions and validation steps taken.

Based on the information provided, we made an independent judgment regarding whether the recommendation had been implemented and validated.

The Standing Committee report identified seven problems areas related to EPA's contracts management:

- Personal services
- Contractor access to confidential or sensitive data
- Contractor conflicts of interest
- Contractors performing inherently governmental functions
- Loss of in-house expertise
- Control of contractors' costs
- Control of contractors' performance

We devised steps for each of the seven areas to assess whether these problems still existed. For all areas except “loss of in-house expertise”, we selected a random sample of contracts, active in fiscal year 1996, to review. We judgmentally supplemented some samples with potentially vulnerable contracts that came to our attention during the course of our survey work. For each of these six areas, we identified (with input from EPA officials) a universe of contracts which we believed had a high risk of having the particular problem, and picked our review sample from those contracts. For example, for inherently governmental functions, we excluded contracts for janitorial services and shuttle bus services, among others.

To identify the contract universe and sample for inherently governmental functions, controls over contractor costs, and controls over contractor performance, we used data obtained from EPA’s Contract Information System (CIS). We did not evaluate the controls over CIS or the quality and integrity of data within this system. As a result, we cannot attest to the accuracy of the data in the system. However, the Agency uses this data to report contracting accomplishments, and as such, we relied upon the data for sample selection and analysis.

To identify the contract universe and sample for personal services, we used CIS and lists of on-site contracts compiled by each of the four contracting divisions. To identify the contract universe and sample for contractor access to confidential and sensitive data, we requested and obtained from each Senior Resource Official a list of the contracts they manage which involved access to confidential or sensitive data. To identify the universe and sample for conflicts of interest, we used CIS and a list of contracts with special conflict of interest clauses, obtained by OAM from the Integrated Contract Management System. We were not able to test the accuracy of these lists, and cannot attest to the accuracy of the universes we identified. However, this data was not an integral part of our survey, and was not substantially relied upon to accomplish our objectives.

We arrived at these universe and sample sizes:

Problem Area	Universe Size	Contracts Reviewed
Personal services	558	12
Contractor conflicts of interest	296	7
Contractor access to confidential or sensitive data	232	8
Inherently governmental functions	529	18
Control of contractors' costs	527	13
Control of contractors' performance	527	13

For the sample contracts, we (1) reviewed contract files; and (2) interviewed contracting officers, project officers, work assignment managers, delivery order project officers, and contractor personnel, as appropriate. In reviewing contracts for personal services, we also visited the work location, if the contractor was co-located with EPA staff.

For "loss of in-house expertise", we analyzed information from EPA's Personnel Payroll System, EPA workforce snapshots, EPA workforce profile data, and Government-wide information from the Office of Personnel Management. We also interviewed two key members of the Standing Committee who were involved with this issue.

Although specific internal controls may have been reviewed during this audit survey of EPA contracting, an evaluation of internal controls over EPA contracting activities was not an objective of this survey. The survey scope was limited to assessing the Agency's implementation and validation of the Standing Committee's 40 recommendations and any control deficiencies identified were incidental to this purpose. Other issues related to appropriate procurement vehicle; interagency agreements; and procurement planning came to our attention during the survey which we believe warrant further audit work but which could not be addressed due to time constraints. These issues have been proposed for future audit work.

We met with EPA officials on July 1, 1997 to discuss the results of our survey. We issued the draft report to the Acting Assistant Administrator for Administration and Resources Management on August 19, 1997. His response to the draft report, dated September 23, 1997, is included in its entirety as Appendix 1. We made revisions to the final report, where appropriate, based on the comments received. We provided the Office of Acquisition Management (OAM) detailed written comment addressing the Agency's concerns, as such an exit conference was not held.

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Recommendation Status

No.	Recommendation	Implemented	Validated	Note
1	Consolidate the contracts, grants, and suspension and debarment functions in an office-level organization reporting to a new Deputy Assistant Administrator for Acquisition Management in OARM.	Yes	No	
2	Establish a separate suspension and debarment staff within the new acquisition office apart from the contracts and grants functions to provide for a more aggressive use of this authority in managing contractor performance.	Yes	No	
3	Establish a separate acquisition policy, training, and oversight unit within the new office to ensure that these critical functions compete successfully with contract acquisition and administration for resources and management attention.	Yes	No	
4	Analyze the reporting relationship between the new Office of Acquisition Management and the contract management functions in Research Triangle Park and Cincinnati to determine whether a direct reporting relationship would strengthen or weaken management accountability and support for these field acquisition units.	Yes	No	
5	Launch an Agency-level Quality Action Team to improve the procurement process.	Yes	No	
6	Establish "factory floor" quality contracting teams to plan, implement, and evaluate individual contracts.	Yes	No	
7	Institutionalize Senior Procurement Official (SPO) positions in EPA programs and regions by issuing formal guidance and delegations to define responsibilities and define requirements for certification by OARM.	Yes	No	
8	Require internal vulnerability assessments using the checklist in Appendix L of the staff report; require that all Agency senior managers use this checklist in their annual FMFIA process.	Yes	No	
9	Strengthen management tools such as the Federal Managers' Financial Integrity Act (FMFIA) process using the checklist developed by the Standing Committee (Appendix L of the staff report) to identify more effectively contract management vulnerabilities.	Yes	No	

Recommendation Status

No.	Recommendation	Implemented	Validated	Note
10	Require Contract Management Plans for all major contracts; these plans should specify program roles, resources, and responsibilities in managing the contract; identify key vulnerabilities inherent in the contract and describe provisions for dealing with these; and establish milestones for key decisions and actions.	Yes	No	
11	Require all offices to submit an Annual Acquisition Plan, to define contract needs, beginning in FY93, including where appropriate, an A-76 analysis, a description of how contracts will be managed, special contracting needs (e.g., quick response services), vulnerabilities (e.g., handling of sensitive data), supplier capabilities, and internal capacity to manage contracts and other extramural support.	Yes	No	
12	Develop guidance defining the "Contracting Team" concept and applying it to all major EPA procurements.	Yes	No	
13	Design and implement, if appropriate, a pilot test of more extensive and formal delegation of procurement authority to one or more program offices and regions to make program offices and regions more accountable for contract management.	Yes	Yes	
14	Require EPA program and regional strategic plans, annual budgets, and operating plans to reflect formal workforce planning and justify the proposed mix of intramural and extramural resources.	?	?	a
15	Request appropriate revisions in EPA's FY93 budget request now pending before Congress to increase staffing levels of the central acquisitions functions, legal counsel support, and program and regional contract management functions.	Yes	Yes	
16	Give priority to acquisition management functions in EPA FY94 budget request to ensure appropriate staffing for acquisition management functions throughout EPA.	Yes	Yes	
17	Appoint an SES-level employee with the training qualifications and quality management experience to lead the development of a comprehensive acquisition management training program.	Yes	Yes	

Recommendation Status

No.	Recommendation	Implemented	Validated	Note
18	Require periodic certification by the Agency's Procurement Executive of all Agency senior executives, managers and staff who perform acquisition management functions to ensure that their training and performance warrant their being entrusted with acquisition responsibilities. Certification of SES members should be integrated with the SES certification process.	Yes	No	
19	Require that all employees receive training in procurement integrity by 1/93 as part of the ethics training program.	Yes	No	
20	Establish a mandatory orientation program in acquisition ethics and operating principles for all new EPA employees that is tailored to EPA's specific requirements.	Yes	No	
21	Establish a mandatory training, including periodic refresher courses, in acquisition ethics, policies, and management methods for all EPA Project Officers, Managers, and Senior Executives.	Yes	No	
22	Develop a practical training course that instructs Managers and Project Officers on how to manage contracts, control costs, evaluate performance, encourage quality, and negotiate terms.	Yes	No	
23	Upgrade EPA's Education Requirement for Procurement Professionals in EPA.	Yes	No	
24	Provide an updated index of existing guidance documents issued by all headquarters offices, regional offices and field labs.	Yes	No	
25	Prepare cost estimate guide and develop corresponding data bases to assist with the development of valid independent government cost estimates (IGCE).	No	No	b
26	Eliminate inconsistencies in, and issue uniform guidance on, management of contracts including the preparation of all procurement documents.	Yes	Yes	
27	Identify procurement responsibilities in recruiting materials and job announcements.	Yes	No	
28	Use performance agreements and evaluations to give emphasis to contract management responsibilities.	Yes	No	
29	Describe acquisition management responsibilities in position descriptions.	Yes	No	

Recommendation Status

No.	Recommendation	Implemented	Validated	Note
30	Examine grade structure and award program to give appropriate recognition to contract management responsibilities.	Yes	No	
31	Develop a career track for contract managers in much the same way that the Agency has for scientists and technical personnel.	Yes	No	
32	Evaluate EPA's disciplinary system to ensure tough, equitable, and consistent treatment of personnel who violate Agency rules and requirements.	Yes	No	
33	Use independent government cost estimates (IGCEs) to analyze contractor costs.	No	No	b
34	Educate contract personnel on the use of procurement sanctions including suspension and debarment to enforce contracts.	Yes	Yes	
35	Use contract types other than cost-reimbursement contracts where appropriate.	No	No	c
36	Develop policy on allowable and unallowable indirect costs.	Yes	Yes	
37	Develop an integrated contract management information system that meets the needs of both EPA programs and the central acquisition functions, that is linked to EPA's integrated financial management system, and that is fully operational by FY 1995.	Ongoing	N/A	d
38	Seek amendments to EPA Acquisition Regulations (EPAARs) and the Federal Acquisition Regulation (FAR) indirect cost rules.	Yes	Yes	
39	Review approval requirements of NCPD to determine consistency with the Prompt Payment Act.	Yes	Yes	
40	Complete plan for addressing the material non-conformance of reconciling the Personal Property Accountability System with the Integrated Financial Management System	Ongoing	N/A	d

Notes

- a. We were unable to verify the implementation of this recommendation. Agency-provided documents did not support that the recommendation, or its intent, was substantially accomplished.

Recommendation Status

- b. We disagree with EPA's determination that these recommendations were implemented, based upon recent work conducted by our Southern Audit Division, in response to an OMB request. Our auditors found that, while EPA staff were *preparing* independent government cost estimates, many estimates were not detailed (by task), and staff was not using them to analyze or negotiate contractor costs. Also, no Agency-wide or program-wide databases have been developed. While some offices have independently developed databases, or had access to other databases (such as the Corps of Engineers'), our auditors found that staff did not use these resources.
- c. We disagree with EPA's determination that this recommendation was implemented. We base our conclusion on three observations: (1) the Agency's strategy addressed only a single alternative to cost-reimbursable contracts (multiple awards with competed work assignments); (2) government requirements under the Federal Acquisition Streamlining Act superseded the planned pilot procurement, thus the procurement was not monitored and reported on as planned; and (3) comparative data from FY 92 and FY 96 show that EPA's use of cost-reimbursable contracts increased slightly to 86.7 percent of EPA's total contract universe (see report E1SKF7-04-0037-7100301).
- d. EPA plans to complete implementation of these recommendations in 1997; we did not review them.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D C 20460

SEP 23 1997

OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT

MEMORANDUM

SUBJECT: Response to Draft OIG Report - Survey of EPA's
Contract Management Initiatives
Draft Report No. E1YFG7-05-0002xxxxxx

FROM: Alvin M. Pesachowitz
Acting Assistant Administrator for Administration and Resource Management

TO: Elissa R. Karpf
Deputy Assistant Inspector General
for External Audits

We thank you for the opportunity to respond to this draft survey and the willingness of the OIG auditors in discussing and clarifying the issues. While we may not agree on all issues, all our interactions and dialogue have been very productive. Our comments regarding the findings are as follows:

RESULTS OF REVIEW

Page 3, 3rd para

1. **Survey Results** - It should be noted that the referenced draft report E1SKF7-04-0037 has not been finalized and therefore should not be included at this time

Pages 4 and 5

2. **Personal Services** - We agree that personal service is a serious issue. The examples identified were not necessarily personal services but indicators. There is a difference between indicators and actual personal services. Personal service is a serious issue that management should and will continue to pay close attention to.

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Note: The original response was signed by Alvin M Pesachowitz.

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Although the survey cited several examples of personal services, some of the examples were indicators of personal services and not in itself personal services. For example, on page 5, third paragraph, third sentence, the report states that under contract 68-W4-0022, "a project officer did not put technical direction in writing." Failure to put technical direction in writing may be considered inappropriate contact management. However, it does not in itself create a personal service situation. The determining factor is to whom the direction is issued. Written technical direction, if given to a contractor employee rather than a supervisor, can create personal services as easily as verbal technical direction. Conversely, verbal technical direction, if issued to the proper contractor supervisor, does not create personal services. Therefore, the issue is whether the technical direction is issued to the proper contractor employee, not whether it is verbal or written.

The survey also states that if "unauthorized Agency personnel direct contractor staff, work outside the scope of the contract might be performed." We recommend that this sentence be eliminated or reworded because in no instance should Agency personnel direct contractor staff. Although work outside the scope of the contract is a serious contract issue, we do not consider this a personal service issue.

3. Contractor access to confidential or sensitive data

Anytime the contractor has access to CBI we will insure that adequate safeguards are included in the contract.

4. Contractor conflicts of interest (COI)

The report states that no specific, unresolved conflicts of interest exist. However, there were concerns. Those concerns are addressed below:

A. EPA's heavy reliance on contractors' self reporting of potential conflicts of interest

OAM agrees with the OIG that the Agency has several contracts that have a potential for conflicts of interest. We do not concur with the findings that the Agency's COI procedures rely too heavily on contractors' self-certification or reporting.

Contractors' certification is the most practical and cost-effective mechanism for identifying a contractor's actual or potential conflict. We would like to, as the OIG suggests, routinely monitor the daily operation of every contractor's COI system, however, this would be cost prohibited in terms of resources.

-3-

B. EPA's limited efforts to assess the implementation of contractor's conflict of interests plans.

We agree that the Agency reviews contractor's COI plans on a regular basis. We also examine the implementation of our contractor's procedures. Since COI was first identified as an Agency level weakness, we have selectively audited several contractors' COI procedures. Our most recent audit was conducted in August 1997.

We feel the example cited on page 7 in the survey, which describes specific details on a pre-award conflict, shows the proper procedures that the Contracting Officer should take when confronted with a potential COI issue. In addition, this example demonstrates that EPA's COI prevention system works and prevents conflicts from occurring.

C. The existence of several "cradle to grave" contracts that may allow the same contractor to help EPA both define and implement requirements.

We concur that the Agency has several contracts which have a potential for conflicts of interests. However, we are confident that we have the appropriate mechanisms in place to prevent COI. Our contracting Officers actively enforce the limitation of future contracts clause and continue to take corrective actions to eliminate potential COIs.

Given our COI procedures are the most comprehensive within the Federal Government, we do not believe that COI should be included as an issue in the OIG's recommendation to maintain contract management as an Agency-level weakness.

4. Appendix II

Recommendation No. 35, Note C - The report indicates that CMD-RTP agreed to pilot an acquisition (multiple awards with competing work assignments) but the program had not agreed to the pilot. It is unclear where this information was obtained. CMD-RTP had obtained a commitment from the program office.

The report is accurate in that the selected acquisition for the pilot was overcome by FASA. Although no longer called a pilot, the acquisition was processed as originally envisioned under the planned pilot, i.e., multiple awards with competing task orders. It is unclear how "treating the acquisition as a pilot" would have resulted in different actions or results. It should also be noted that guidance has been issued by the Agency - Chapter 16 of the Contracts Management Manual, entitled Issuance of Task or Delivery Orders Under Multiple Award Contracts.

We thank you for the opportunity to discuss the issues contained in this survey. Should you or your staff have any questions or need additional information regarding this response, please contact Betty L. Bailey, Director, Office of Acquisition Management at (202) 564-4310 or her staff, Joan Roberts, at (202) 564-4310.

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