

**CONTRACTS MANAGEMENT AT EPA:  
MANAGING OUR MISSION**

*Standing Committee Recommendations*

*Standing Committee Staff Report*



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## **CONTRACTS MANAGEMENT AT EPA:**

### **MANAGING OUR MISSION**

*Recommendations of the Standing Committee on  
Contracts Management*

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

JUN 30 1992

Memorandum

**SUBJECT:** Recommendations of the Standing Committee on Contracts Management

**FROM:** Christian R. Holmes, Chair *Christian Holmes*  
Standing Committee on Contract Management

**TO:** William K. Reilly  
Administrator

**EXECUTIVE SUMMARY**

During its first three months, the Standing Committee has focused on two objectives -- first, to identify and, where possible, to begin action to correct wide-spread problems identified in the Inspector General's audit of the Computer Science Corporation (CSC) contract; and second, to identify and recommend corrective actions for the root causes of the "EPA contracts management problem" that has plagued the Agency for much of its history.

The recommendations of this Standing Committee call for nothing less than a total overhaul of EPA's \$1.2 billion annual contract program. This overhaul will involve major reforms in the way EPA contracts with private companies that provide a wide range of services to the Agency. These reforms establish a fundamentally new direction in the way that EPA's 4,000 project and contract officers manage EPA's 744 contracts and the 27,000 work assignments which are issued annually under these contracts. The urgency of these reforms is evident in the fact that EPA's existing contracts have a potential value of \$13.2 billion.

This Committee has taken a very critical look at EPA, and proposes some difficult steps to end, once and for all, the Agency's persistent contract problems. When we follow through as proposed, it will be the first time that EPA has comprehensively addressed how it can best manage a contract program which has increased by 237% since 1981. During this same period, the Agency's own workforce, a significant portion of which is devoted to contract management, has increased by only 25%. This disparity highlights the challenge we face in undertaking to build a contracting program at EPA that is characterized by efficiency and integrity and effectively supports our environmental mission.

## **Recent Steps to Strengthen Contract Management**

In addition to the changes recommended by the Standing Committee, it is important to note that much has already been accomplished, and even more steps are being completed as this report is submitted. The steps already completed or underway to correct EPA's contract management problems are reflective of the new direction recommended by the Standing Committee; some of these recent steps include:

- o The formation of this Standing Committee has engaged the Agency's leadership group in the most intensive, and far-reaching effort ever undertaken to strengthen contract management in EPA.
- o A series of difficult decisions have been made in response to the Inspector General's audit of the Agency's largest contract, a five-year information management contract with Computer Sciences Corporation (CSC) with a potential value of \$347 million. Hard decisions have also been made in response to other IG investigations, and more are coming. These decisions include canceling contracts, restructuring one of EPA's largest contracts to make it more manageable, phasing out contracts, and replacing contractors with EPA personnel to ensure full protection of particularly sensitive confidential business information (CBI).
- o EPA has committed additional resources to strengthen contract management in FY 1992 and FY 1993. The Agency has earmarked an additional \$3 million for new procurement staff in FY 1992, and is intent on allocating additional staff to procurement functions in our FY 1993 budget. These resources will supplement increases being made in the number of EPA auditors in FY 1992 and 1993; by the end of FY 1993, one out of every 40 EPA employees will work for the Inspector General.
- o Major changes are being made in the Agency to strengthen accountability for contracts management; these changes include the recent designation of new, high level officials, known as Senior Procurement Officials (SPOs), who have far-ranging responsibilities to cut across traditional bureaucratic lines to ensure that contracts are well managed. Additionally, EPA is reorganizing the Agency's office responsible for finance and administration to ensure that the leaders of EPA's contract management function have the authority to get the job done.
- o A commitment has been made to change EPA's underlying culture, which presently sees technical work as paramount, and views contract management as lesser work. In the future, we will strive to ensure that EPA's culture is one



driven to protect both the environment and the taxpayer's dollars. In an important first step, over 85 % of EPA's Senior Executives attended a two-day training program in contract management and ethics, the largest gathering of SES members in EPA's history. To forever change the embedded attitudes responsible for "cutting corners" in contract management, the Standing Committee is calling for the permanent establishment of the most comprehensive training program in the history of EPA.

- o We are improving communications with the contractor community, while at the same time, taking steps to ensure that we maintain an "arms length" relationship with individual firms under contract to EPA. Our goal is to ensure that both EPA and the contractor community share a common understanding and commitment to tight adherence to the highest standards of contract management. In this regard, for the first time in EPA's history, we recently convened a two-day meeting with representatives of EPA's largest contractors and the Defense Contract Audit Agency to discuss plans for tightening up contract management generally, and control of indirect costs in particular.
- o A commitment has been made, and new techniques are being employed, to eliminate frivolous charges being included in contractor indirect costs. These charges in the past have included such items as gold watches and parties, items that might previously have been deemed acceptable under Federal regulations. EPA, now and in the future, is rejecting all such charges as an unacceptable use of taxpayer's money, and has moved aggressively to disallow payment when these items are detected in indirect cost billings.
- o We are acting to increase the security of EPA's information systems. Since EPA is increasingly an information management agency with an ever increasing reliance on information systems, we deem it imperative that we tighten up on the security of these systems. We are raising our requirements for background checks on contractor personnel, and are building in new, improved methods to secure sensitive data in Agency computer systems.

#### **Standing Committee Recommendations**

The above steps, and many other, even more fundamental reforms will be required to finally correct EPA's contracts management problem. This problem has many causes; the most important, however, is an Agency culture that views our environmental protection mission as more important than how we manage contracts. This view of the world, this "Mission vs. Management" paradigm, sees program and technical work as paramount, and views contracts management as lesser work. The

Standing Committee recognizes that the American people and the Congress expect, and have a right to demand, that we do both jobs and do them well. Our recommendations have been designed with this in mind.

The root causes of the "EPA culture" and the resulting, persistent contract management problems are complex. No single measure will overcome this culture, but leadership and accountability are the essential ingredients in any permanent solution. Thus, the Standing Committee's recommendations focus on actions to, above all else, ensure personal and organizational accountability for contract management decisions at all levels of EPA.

The Standing Committee has been aided enormously by a staff effort directed by John Barker and carried out by a group of exceptionally devoted professionals from across EPA. A copy of the staff report is included as an attachment to this memorandum. Drawing on the staff analysis, and the experience of its members, the Standing Committee has identified seven key deficiencies in EPA contract management. More specifically, we have concluded that contracts management in EPA needs major improvements in: (1) the organizational standing of Agency procurement functions; (2) management accountability; (3) resource allocation; (4) training; (5) policy and guidance; (6) human resources development; and (7) control of contractor cost and performance.

Specific recommendations have been developed addressing each of these seven areas. These recommendations embrace nearly all of the suggestions put forward by the staff, with two primary exceptions discussed below. In designing our recommendations, we have tried to strike a responsible balance between the desire for immediate action on the one hand, and the reality that a serious, long term reform effort will require careful planning to set difficult but attainable goals and firm completion dates.

With this in mind, the Standing Committee recommends the following specific actions to, once and for all, eliminate EPA's persistent "contract management problem:"

1. Consolidate and elevate EPA's procurement functions. EPA's contract, grants, and suspension and debarment functions should be consolidated under a new Deputy Assistant Administrator (DAA) for Acquisition and Assistance Management, reporting to the Assistant Administrator and Chief Financial Officer. Adding the new DAA position strengthens the organizational change previously announced in March and then placed on hold pending Standing Committee review. Work on this reorganization is now underway, and will be completed within 90 days. This change will provide needed visibility and accountability for procurement integrity and effectiveness at the highest levels of EPA.

We gave serious consideration to a related organization proposal put forth by the Standing Committee staff. We decided that the staff proposal, which called for establishment of a new Assistant Administrator, would seriously delay, and thus dilute the impetus for, essential reforms. We also felt that the staff proposal could weaken the Chief Financial Officer (CFO) by separating fiscal control and procurement functions from operational control of the critical information systems and human resources functions.

2. Integrate program and contract management accountability.

Congress and the American public want to know, "Who is accountable?" when contract management problems arise. If adopted, our recommendations will leave no doubt -- we propose that three primary points of accountability be clearly defined and formalized within 90 days:

- o Senior Procurement Officials (SPOs) in each EPA program and region.
- o The new DAA for Acquisition Management proposed above.
- o EPA's CFO and Assistant Administrator for Administration and Resources Management.

EPA's CFO implementation plan, which assigns ultimate responsibility for management integrity to the CFO, should continue its current, aggressive implementation. The SPO positions should be institutionalized within 90 days by an EPA Order, revised position descriptions, performance standards, and if appropriate, delegations of authority. Our detailed recommendations include steps to ensure that managers at all levels are accountable for both program and management performance. We also plan to design and, if deemed appropriate, implement a pilot delegation of procurement authority to program officials.

3. Allocate increased resources to contract management. We endorse the decision to provide additional resources to the procurement functions in FY 1992, and we recommend that action be taken immediately to allocate additional resources to procurement from within the EPA budget now pending before Congress. Finally, we urge that contract management be given a high priority in the Agency's FY 1994 budget request to be submitted later this year.

4. Develop a comprehensive procurement training and certification program. The Standing Committee is convinced that little progress can be made in changing behavior without a firm commitment to comprehensive, mandatory procurement training at all levels. To ensure that this

program receives the full-time, high level attention required for success, and reflects the real needs of EPA's programs, we recommend that, within the next 30 days, you detail a Senior Executive Service member from an EPA program office to lead this effort over the next six to 12 months. At the end of that period, a decision can be made on how best to institutionalize this training program within EPA's human resource development program. This program should draw on the very best procurement training ideas and programs available from the public and private sectors.

5. Develop comprehensive, accessible contract management policy guidance aimed at program officials. It is clear to the Standing Committee that EPA's procurement policy and guidance, which is designed primarily for procurement professionals, falls short of providing effective guidance and support to the much larger number of program staff and managers who set requirements, staff technical selection panels, and manage contracts once they are awarded. Improvement in this area goes hand-in-hand with tighter accountability; to ignore this need would be to either slow the procurement function intolerably or place EPA employees at great risk.
6. Revise EPA's human resources policies and programs to reflect the central role of contract management in all EPA programs. This recommendation, which involves a series of steps over the next 6-18 months, is fundamental to permanent change in EPA. In the short term, we are proposing mandatory insertion of procurement responsibilities in performance agreements and position descriptions; over the longer term, we recommend a top-to-bottom revamping of EPA's disciplinary system to ensure both equity and an "arms-length" approach to ensuring accountability.
7. Move aggressively to improve controls on contractor costs and performance. The Standing Committee staff identified a number of steps that should be taken to ensure that EPA is aggressively pursuing every possible means of controlling contractor costs and performance. These range from new forms of contracts to requiring independent government estimates to more aggressive use of our suspension and debarment authority. We endorse all of the staff proposals, with specific emphasis on those described in the remainder of this report. In carrying out these recommendations, we recommend that, while working closely with OMB, the Agency seek a leadership role in controlling indirect costs.

The Standing Committee believes that these recommendations will dramatically improve EPA contract management. At the same time, we wish to call to your attention two critical points concerning where we go from here -- the importance of achieving

more integrity in the process of setting expectations for environmental programs, and the need for detailed implementation planning to ensure that these reforms are carried out.

For over two decades, the Executive Branch and the Congress have pursued deeply desired environmental gains through increasingly prescriptive statutes that specify program outputs and due dates in great detail. Both parties to this process have grown accustomed to proposing or acceding to unrealistic program expectations that then cannot be revised without political consequences. EPA has not always been a helpless victim of this process. Motivated by the same desire for environmental improvements that animates the other participants, the Agency has sometimes been actively involved in setting what turn out to be unrealistic requirements for itself. It is important to note that demanding statutes without appropriate resource levels do not relieve EPA of its responsibility for allocating sufficient resources to assure the integrity of contract management functions. So long as this situation prevails unchallenged, however, there will be continuing pressure for EPA staff and managers to cut corners to achieve program outputs.

#### **Implementation Plan**

We will begin action on all recommendations immediately; we also propose to begin work immediately on a detailed implementation plan. In fact, I will convene the Standing Committee on Monday, July 6, to begin this work.

Once completed (we estimate it will take 90 days to prepare), the plan, in combination with this memorandum, will be used by the Standing Committee to oversee and track implementation. We suggest that this plan also be provided to the Congress with an invitation that they use it to hold EPA accountable for completing the announced reforms in a timely way. It is imperative that we set realistic deadlines; otherwise, we will lose credibility with the Agency and the Congress.

The balance of this memorandum presents our findings and recommendations in five sections, as follows:

- o Background
- o General Observations
- o Needed Improvements
- o Implementation of Recommended Improvements
- o Conclusions

## **A. BACKGROUND**

In early March 1992, you established a Standing Committee on Contract Management and appointed me chairperson. Since our initial meeting with you and the Deputy Administrator, the Standing Committee has met numerous times and has received briefings and a detailed report from the staff.

Each Standing Committee member has given this effort the highest priority and we are committed to continuing our oversight over contract management until we have satisfied you that our charge has been completely fulfilled. We will submit quarterly reports to you to keep you appraised of our progress. This is the first of our quarterly reports.

In this quarterly report, we will provide you with our general observations about the contract management issues facing EPA, the specific areas that we have identified for attention and improvement, and our recommendations as to how short-term and long-term improvements can be implemented.

## **B. GENERAL OBSERVATIONS**

Over the short three months that the Standing Committee has been in existence, we feel that tremendous progress has been made in our understanding of the substantial contract management issues that are before us as managers and as an Agency. Based upon our collective understanding, we have made the following general observations.

First, as the Agency has received increased contract funding over the past decade to meet its ever-expanding statutory responsibilities, we have not comprehensively adjusted our management controls over these increased contract resources to ensure adequate accountability and to maintain an arm-length's relationship with contractors. There have been early warning signals that we have chosen to view as isolated instances and not interrelated requiring a more comprehensive, agencywide approach.

In those instances where it has been necessary to have contractors working in EPA facilities, a basic rule governing the relationship between EPA employees and contractor employees was not fully observed. The basic rule is that contractor employees are not to be used as if they are Federal employees. Failure to observe this rule has resulted in contractor employees performing personal services under the continuous supervision of EPA managers, performing work that is inherently governmental, or having unauthorized access to information.

It is important to note that this problem is twenty years in the making. During this period, EPA's statutory responsibilities have expanded because of the passage of numerous environmental

laws. These have required EPA to promulgate regulations, develop standards, issue permits, conduct research, clean up contaminated sites, and conduct many other types of technical, scientific, economic, and policy activities. For many reasons, Congress and the Executive Branch have chosen to support the increase in workload due to the legislative requirements by increasing contract resources to a much greater degree than the number of Federal Government employees. The result is that the ratio of EPA employees to contract resources has decreased significantly, with contract resources growing at 10 times the rate of EPA staff over the past decade. This has increased the demands on the Agency's staff to effectively manage contractors.

As we take on the task of improving contract management within EPA, you need to be aware that a fundamental tension has been created and is likely to continue for the foreseeable future. This tension occurs because of the type of work EPA needs to do to meet the legislative goals and the need to use contractors to carry out much of the work. This does not absolve the Agency and its employees and managers from effectively and efficiently using contract resources but recognizes that accomplishing it will be a constant challenge.

Second, as it relates to contract management, the Agency has operated under the paradigm that the Agency's environmental mission is so important that contract management is secondary to accomplishing it. Contract management is generally viewed as a bureaucratic burden that is not assigned a high priority. Program managers and staff who are successful in increasing program outputs are often promoted and rewarded as outstanding employees even if contract management requirements are circumvented. The result is little contract accountability in terms of contractor performance, costs, and quality. We believe that contract accountability can be improved only if this underlying cultural attitude is eradicated.

Third, we believe that lasting cultural change can only be made by taking a comprehensive, agencywide approach directed toward educating all employees, including managers at all levels, that good contract management is a shared responsibility, removing barriers beyond their control that impede quality contract management, and instructing them on what is required. We believe that the EPA workforce has integrity, wants to follow the rules, and recognizes that more accountability in contract management is necessary.

Fourth, improving the contract management practices that have developed over the life of the Agency will take longer than the three months that we have been focusing on this subject. We have a number of improvements that we are recommending that the Agency implement. We will start implementing all of these improvements immediately. We project that they will be completed

within 90 days, within 180 days, or over 180 days. The two day contract management training that we provided to SES members earlier this month was a good first step in raising their awareness toward contract accountability. We have also initiated other contract reforms recently that will serve as the foundation for the added improvements that we are recommending. In addition, we believe that building upon our recent experiences in addressing management issues in Superfund contracting, Clean Air Act Amendment implementation, and strategic planning and budgeting has served as a successful starting point for this effort.

Finally, laying the foundation for such an approach will require the commitment of resources. The Deputy Administrator has recently reallocated resources in FY 1992 to begin an orderly build-up of staffing levels in the Agency's central acquisition management functions. We fully endorse this reallocation. As we move toward developing our FY 1994 budget request, we need to focus on resource requirements to maintain this effort.

#### **C. NEEDED IMPROVEMENTS**

There are three general areas that are in need of improvements. The three general areas are EPA contract management, contract systems, and contract processes. These three general areas have been identified from the staff report. The staff report also identifies specific problems within each general area. Based upon our analysis of the staff report, we believe that following specific improvements need to be made.

In the general area of EPA contract management, we believe that the following improvements are needed to address the problems identified by the staff report.

1. Inherently governmental functions.
  - a. EPA needs to improve controls to ensure that contractors do not assume operational responsibility for functions that are inherently governmental in nature.
2. Personal services.
  - a. EPA needs to improve controls to prevent contractors from performing personal services.
3. Confidential and sensitive information.
  - a. EPA needs to improve controls to protect confidential and sensitive information from unauthorized access or disclosure.



4. Conflicts of interest.
  - a. EPA needs to maintain an arms length relationship with its contractors, and strengthen personal and organizational COI strictures.
5. Loss of in-house expertise.
  - a. EPA needs to retain its technical expertise to review, evaluate, and oversee contractor performance.
6. EPA control of contractor performance.
  - a. EPA needs to improve controls over contractor performance.
7. EPA control of contractor costs.
  - a. EPA needs to improve controls over contractor direct and indirect costs and over government property provided to contractors.

**In the general area of EPA contract systems, we believe that the following improvements are needed to address the problems identified by the staff report.**

1. Lack of management accountability.
  - a. EPA needs to improve overall management systems to support corrective actions to contract management problems.
  - b. EPA needs to change agency cultural attitudes toward accountability for contract management and administration.
  - c. EPA needs to clarify responsibilities and relationship of contract officers, project officers, work assignment managers, and delivery order project officers, and their supervisors, toward contractor performance and contract management.
  - d. EPA needs to enforce accountability for corrective actions to audit and GAO recommendations.
2. Management Infrastructure.
  - a. EPA needs to review the organizational placement of its business and financial functions to improve contract management and accountability.

- b. EPA needs to review the organizational placement and reporting relationship of the Competition Advocate to ensure the Advocate's independence and ability to carry out assigned duties.
- 3. Allocation of resources.
  - a. EPA needs to conduct a more comprehensive and systematic analysis of what functions the Agency should and should not contract out.
  - b. EPA needs to have senior management allocate more resources to increase accountability for and improve oversight over contract management.
  - c. EPA needs to use a more systematic and analytical approach to estimate and coordinate contract management budgetary needs and usage.
- 4. Poor use of human resources.
  - a. EPA needs to link strategic planning, budgeting, and contracting to estimate workforce requirements for contract management.
  - b. EPA needs to promote contract management responsibilities in recruiting, hiring, training, awards and recognitions, and personnel management.
- 5. Inadequate involvement of legal counsel.
  - a. EPA needs to strengthen legal input into the Agency's contract management process and decision making.
  - b. EPA needs to increase access by regional offices and field labs to qualified legal advice on contract management matters.

**In the general area of contract processes, we believe that the following improvements are needed to address the problems identified in the staff report.**

- 1. Lack of clear guidance.
  - a. EPA needs to improve its contract management policy function through clear and uniform guidance that is developed in cooperation with program customers and better communicated to users.

2. Management difficulties with cost-reimbursement contracts.
  - a. EPA needs to re-examine how contract types (other than cost-reimbursement contracts) that provide better accountability and cost controls can be used to meet the Agency's requirements.
  - b. EPA needs to better structure individual work assignments and delivery orders.
  - c. EPA needs to improve management controls over cost-reimbursement and award fee contracts to encourage better contractor performance, to evaluate contractor performance, and to protect against personal services.
3. Inadequate training.
  - a. EPA needs to improve its contract training and awareness program for Agency managers and contract personnel to ensure quality contracts management, to meet the needs of users, and to promote understanding of contract rules and process.
4. Poor cost estimation.
  - a. EPA needs to increase Agency expertise and improve guidance and supporting data on preparing independent government cost estimates for use in cost negotiations.
5. Inadequate monitoring of contract cost and performance.
  - a. EPA needs to improve controls, training, and accountability in reviewing and evaluating contractor invoices.
  - b. EPA needs to improve the monitoring of contractor performance so that timely evaluations can be given.
  - c. EPA needs to improve training and guidance on accounting for the disposition of government-furnished property provided to contractors.
6. Problems with indirect costs.
  - a. EPA needs more aggressive methods to control indirect costs in terms of Government norms; and provide leadership where Government norms fail to adequately protect the public interest.

- b. EPA needs to ensure that contractors have sufficient internal controls and adequate record-keeping to eliminate excessive or unallowable costs.

7. Sanctions.

- a. EPA needs to promote better understanding of the use of sanctions such as suspension and debarment that have been successfully used by the Agency to ensure contractor integrity.

8. Lack of communication/coordination.

- a. EPA needs to improve information sharing across the Agency and at all levels about contracts, contractors, subcontractors, and contracting guidance with special emphasis given to information sharing among contracting officers, project officers, delivery order project officers, and work assignment managers. The methods used should include the full range of innovative techniques applied elsewhere in EPA, including hotlines, electronic bulletin boards, and a newsletter.
- b. EPA needs to enhance coordination between OARM and OGC on important contracting matters.
- c. EPA needs to ensure that corrective actions in response to OIG or GAO audits are implemented in a timely manner.

**D. IMPLEMENTATION OF RECOMMENDED IMPROVEMENTS**

The improvements enumerated above must be integrated into a comprehensive approach aimed toward substantially enhancing agencywide contract management. This will be a difficult and complex task.

The staff report has provided us with a number of detailed recommendations, and on the whole, the Standing Committee members are in general agreement with the staff proposals. We fully agree that we must increase contract accountability at all levels with the Agency, we must have better controls over contractor cost and performance, and we must improve training, resource materials, and personnel management.

We especially endorse the staff recommendation to establish a Quality Action Team to reduce lead times and paperwork costs, improve the consistency of results, and develop reliable process measurements for EPA's contract acquisition process. The

improvements to the contract acquisition process should reduce the incentives to take short-cuts. We also strongly endorse the "Contracting Team" concept proposed by the staff to accomplish life cycle management of contracts from award to closeout.

The Standing Committee will begin immediately to implement these, and all of the recommended improvements that are listed below. We project that these improvements will be completed within 90 days, within 180 days, or over 180 days. For those improvements that will take longer than 180 days to complete, we will develop an implementation plan within the next 90 days. To facilitate the development of this implementation plan, we will focus our actions in the following seven initiatives. The projects described within each initiative form the core of each initiative but are not intended to be all inclusive.

The Standing Committee urges that, with two exceptions, all specific proposals put forward by the staff be included in the Agency's overall program to reform contract management. The two exceptions are those discussed above, establishment of a new Assistant Administrator and Agencywide delegation of procurement authorities, the latter pending design of a pilot test to determine feasibility. More specifically, we recommend action to:

1. Restructure EPA's central procurement functions to increase their visibility and accountability.
  - a. 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 (within 90 days).
  - b. 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 (within 90 days).
  - c. 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 (within 90 days).
  - d. Analyze the reporting relationships between the new Acquisition Management office 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 (within 180 days).

- e. Launch an Agency-level Quality Action team to improve the procurement process (within 90 days).
  - f. Establish "factory floor" contracting teams to plan, implement, and evaluate individual contracts (within 180 days).
2. Integrate accountability for program results and contract management at strategic, operational, and project levels.
- a. Institutionalize Senior Procurement Official position in EPA programs and regions by issuing formal guidance and delegations to define responsibilities and defining requirements for certification by OARM (within 90 days).
  - b. 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 (within 180 days).
  - c. 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 (within 180 days).
  - d. Require Contract Management Plans for all major contracts; these plans should specify program roles, responsibilities, and resources 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 (within 90 days).
  - e. Require all offices to submit an Annual Acquisition Plan to define contract needs, beginning in FY 1993, 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 (within 180 days).

- f. Develop guidance defining the "Contracting Team" concept and applying it to all major EPA procurements (over 180 days).
  - g. 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. (within 180 days).
  - g. 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 (over 180 days).
- 3. Allocate the resources to ensure the efficiency and integrity of EPA's acquisition management functions. As noted above, the Deputy Administrator has reallocated resources in FY 1992 for these functions.
  - a. Request appropriate revisions in EPA's FY 1993 budget request now pending before Congress to increase staffing levels of the central acquisition functions, legal counsel support, and program and regional contract management functions (within 90 days).
  - b. Give priority to acquisition management functions in EPA's FY 1994 budget request to ensuring appropriate staffing for acquisition management functions throughout EPA (over 180 days).
- 4. Develop a comprehensive training program, that draws on the best available ideas and programs from government and private industry to ensure that EPA personnel have the knowledge and practical skills required for effective acquisition management.
  - a. Appoint a SES-level employee with the training qualifications and quality management experience to lead the development of this comprehensive training program (within 90 days).
  - b. 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 recertification process (within 90 days).

- c. Require that all employees receive training in procurement integrity by January 1993 as part of the ethics training program (within 180 days).
  - d. Establish a mandatory orientation program in acquisition ethics and operating principles for all new EPA employees that is tailored to EPA's specific requirements (within 180 days).
  - e. Establish mandatory training, including periodic refresher courses, in acquisition ethics, policies and management methods for all EPA project officers, managers and senior executives (within 180 days).
  - f. 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 (within 180 days).
  - g. Upgrade EPA's continuing education requirement for all procurement professionals in EPA (over 180 days).
5. Revamp EPA procurement guidance documents and policies to ensure consistency across all EPA offices and provide more effective tools for contract managers and personnel to carry out their responsibilities.
- a. Provide an updated index of existing guidance documents issued by all headquarters offices, regional offices and field labs (within 180 days).
  - b. Prepare cost estimate guides and develop corresponding data bases to assist with the development of valid independent governmental estimates (over 180 days).
  - c. Eliminate inconsistencies in, and issue uniform guidance on, management of contracts including the preparation of all procurement documents (over 180 days).
6. Revise EPA's human resources policies to provide appropriate, formal emphasis to acquisition management.



- a. Identify procurement responsibilities in recruiting materials and job announcements (within 90 days).
  - b. Use performance agreements and evaluations to give emphasis to contract management responsibilities (within 180 days).
  - c. Describe acquisition management responsibilities in position descriptions (over 180 days).
  - d. Examine grade structure and award program to give appropriate recognition to contract management responsibilities (over 180 days).
  - e. Develop a career track for contract managers in much the same way that the Agency has for scientists and technical personnel (over 180 days).
  - e. Evaluate EPA's disciplinary system to ensure tough, equitable, and consistent treatment of personnel who violate Agency rules and requirements (within 180 days).
7. Adopt aggressive policies and programs to ensure effective contractor performance and rigorous control of contractor costs.
- a. Use independent governmental estimates to analyze contractor costs (within 90 days).
  - b. Educate contract personnel on the use of procurement sanctions including suspension and debarment to enforce contracts (within 180 days).
  - c. Use contract types other than cost-reimbursement contracts where appropriate (over 180 days).
  - d. Develop policy on allowable and unallowable indirect costs (over 180 days).
  - e. 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 (over 180 days).
  - f. Seek amendments to EPA Acquisition Regulations (EPAARs) and the Federal Acquisition Regulation (FAR) indirect cost rules (over 180 days).

Although we have been greatly assisted in our analysis by the staff report, we have two areas of departure from the staff recommendations. First, the staff report recommends that OARM be divided into two offices with each headed by an Assistant Administrator requiring the Agency to seek an additional presidential appointee confirmed by the U.S. Senate. The Standing Committee disagrees with this recommendation. We believe that the objectives that are intended to be accomplished can be obtained more quickly by implementing the reorganization outlined above.

Second, the staff report recommends that administrative contracting function which are currently in the Procurement and Contracts Management Division of OARM be reassigned to the headquarter program offices, regional offices, and field labs reporting to the newly designated senior procurement officials. Under this approach, OARM would no longer have direct responsibility for contract administration. Although a number of Standing Committee members believe that giving headquarters program offices, regional offices, and field labs full contract administration responsible is worth pursuing, we are all in agreement that we need first to understand the scope of contract administration duties to be transferred, how the contracting officers will be insulated to be able to carry out contract administration duties unencumbered from other pressures, and the mechanism to be used to resolve conflicts.

#### E. CONCLUSION

This is the first in a series of reports we will provide you concerning reforms in EPA contract management. As we track progress in implementing the reforms proposed in this report, you may well conclude that further changes are required. In the meantime, we have set a very ambitious challenge before the Agency. Although we have had only three months to examine EPA's contract management, we believe that the necessary improvements can be successfully implemented within EPA. We are committed to making these substantial improvements a reality in EPA's contract management program. We know that we have your full support in this effort and that we have the cooperation of all Agency offices and employees.

#### Attachments

cc: Deputy Administrator  
Assistant Administrators  
Acting General Counsel  
Inspector General  
Associate Administrators  
Regional Administrators  
Standing Committee Members  
Standing Committee Staff Director

EPA 200-R-92-001  
JUNE 1992

**CONTRACTS MANAGEMENT AT EPA:  
MANAGING OUR MISSION**

**Staff Report of the Standing Committee on  
Contracts Management**



**Staff Report of the Standing Committee on  
Contracts Management**



JUN 30 1992

**MEMORANDUM**

**SUBJECT:** Transmittal of Staff Report

**FROM:** John R. Barker, Director *JR Barker*  
Standing Committee on Contract Management Staff

**TO:** Christian R. Holmes  
Assistant Administrator  
Office of Administration and Resources Management and  
Chairman, Standing Committee on Contracts Management

I am pleased to present Contracts Management at EPA: Managing Our Mission, the report of the Standing Committee on Contracts Management staff. This report is intended to advise and assist the Committee in developing its recommendations to the Administrator for changes in the EPA contracts management program.

This report is part of EPA's commitment, made when the Committee was formed, to conduct a thorough review of procurement and contracts management at EPA, to identify major problems, and to recommend appropriate corrective action.

The report is true to the charge given the staff, *viz.*, to undertake a searching, critical, and comprehensive analysis of contracts management at EPA. It is an action-oriented report; it focuses directly on contracts management problems, identifies root causes, and recommends systemic solutions.

It is important to note what the report is not. The staff's charge was not to review past improvements and accomplishments. Therefore, the report forgoes the recitation of all the many significant steps EPA has taken in the last three years to improve contracts management. Similarly, the staff focused most on internal Agency barriers to quality contracts management as opposed to external factors over which the Agency has less control. Thus, for example, the report does not dwell on the systemic challenge presented by the overall trend in government toward 1) using contractors, 2) restricting the size of the federal workforce, and 3) expanding Congressional mandates (especially at EPA). Finally, while the report uses experiences in other agencies in government as bench marks, the report has eschewed the temptation to take solace from similar problems of sister agencies.

The report should be viewed in the context of EPA's continued efforts to inculcate quality management concepts and practices throughout the Agency. Total Quality Management ("TQM") requires an honest, open approach to identifying opportunities for improvements in EPA's management processes and the Agency's commitment to changes where necessary. This report reflects these continued efforts. In keeping with TQM principles, the staff went to the "front lines" of EPA, in Headquarters, Regions and field locations to interview and conduct focus groups of managers and staff working in contracting organizations day-to-day. The staff went to EPA's internal and external "customers" (including contractors themselves). The focus groups brainstormed about what is right and wrong with the current processes, causes and impacts of contracts problems, their vision of the desired state of contracts management, and ideas and recommendations for achieving that state. The staff met with officials of other federal agencies whose contracts management initiatives have improved administration and oversight. The staff also drew upon the expertise and experience of the Federal Contracts Management Advisory Board, whose members reviewed the analysis, options, and recommendations of the report. All these efforts focused on the cultural and institutional barriers that impede quality contracts management and on the implementation of permanent, systemic changes.

The interviews and focus groups characterized a pervasive "mission vs. management" paradigm among managers that gives specific media program outputs high priority but assigns a relatively low value to cross-cutting initiatives and key management functions like contracts management. This cultural norm may have worked well in the early years of EPA's media program, when in-house Agency staff were hard pressed to produce regulations and develop new programs to implement a barrage of environmental laws. Today, EPA is a highly leveraged Agency focused increasingly on complex, cross-cutting health and environmental issues. The paradigm no longer works well.

EPA historically has been, and continues to be, organized along single media lines, according to the divided mandate handed down by Congress. EPA's mission has become largely equated with peculiar, single-program outputs or products, *i.e.*, permits issued, cases filed, regulations promulgated, *etc.* EPA displays the ability to manage effectively the achievement of these single-program outputs.

EPA finds cross-cutting processes and activities, *i.e.*, those processes and activities involving more than one program or environmental media/statute, harder to manage. By way of example, the Agency has recently put considerable effort into overcoming the institutional impediments to multimedia enforcement, and recent Inspector General audits have indicated problems in the way EPA does information resources management. Contracts management is one of the Agency's most important cross-cutting functions; EPA has acknowledged the need to much improve its performance here. Accordingly, contracts management problems are in reality manifestations of general management problems in that they reflect on EPA's difficulty with delivering outputs or performing functions that involve more than one program or media office.



In the last three years, the Agency has sought to refocus itself so as to go beyond the single media/program perspective. Examples include emphasis on strategic planning, environmental indicators, geographic initiatives, and, as mentioned above, multimedia enforcement. (TQM has been a major tool in this effort.) Generally, EPA has sought to integrate the Agency's diverse programs to develop planned coordinated actions that will produce greater, more meaningful environmental results. By necessity, they have emphasized cross-cutting activities that will meld and focus the Agency's myriad single media/program offices.

Contracts (procurement and management) is perhaps the most critical of the cross-cutting functions; contracts is how EPA gets much of its work done. It is how EPA produces many of its major products. Without an effective contracts function, EPA's program missions and our broader Agency mission is threatened or impaired. EPA's structures, systems, and processes must reflect the Agency's conviction that quality management is vital to EPA's mission, and EPA managers must be accountable for carrying out that mandate. This report provides an opportunity to remove short-term barriers by aligning infrastructure and accountability systems to carry out quality contracts management. It also sets the stage for long-term improvements, moving towards a comprehensive national contracts management effort, involving all facets of the program--fiscal and human resources planning, guidance, training, legal support, communications, and evaluation.

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## PREFACE

The purpose of this Report is to communicate the findings and recommendations of the Standing Committee on Contracts Management's Staff (the "staff") concerning the process of procuring and managing contracts in the Agency. The Report also provides the Agency's leadership with facts, analysis and recommendations necessary to make difficult decisions to change the way EPA perceives and manages its critical contracting functions.

Management experts have told business and government institutions that quality improvement and, perhaps, economic survival require "shifting their paradigms" -- cultural ground rules -- to reflect emerging social, economic and political realities and to anticipate and take advantage of these trends.<sup>1</sup> In developing this Report, the Committee's staff encountered a central EPA cultural paradigm, revered as "conventional wisdom," which we believe is at the heart of the contracts management problems identified by EPA's Office of the Inspector General (OIG) and strongly criticized by members of Congress.

**"Mission vs. Management"** is the most pervasive EPA paradigm encountered: the unwritten cultural belief that the Agency's environmental mission is so important that how we manage our people and public funds is secondary to accomplishing it. In this cultural view, the Agency's technical and scientific work itself is seen as paramount; management and administrative people, programs and decisions are not as important and are often viewed as bureaucratic obstructions to be circumvented. This view applies to Agency management in general and to contracts management in

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<sup>1</sup>Barker, Joel: Discovering the Future -- The Business of Paradigms, Video; Peters, Tom and Nancy Austin: A Passion for Excellence, 1985, Random House/Warner Books, New York, NY.

particular. There is little management accountability; in the final analysis, program managers and staff are rated, promoted and rewarded based on program outputs. Under this paradigm, the management choice is obvious: managers will choose short-term program outputs over other considerations.

All organizations maintain their cultural values and beliefs through formal and informal mechanisms -- organizational structures and systems, employee policies, reactions to crises, and signals leaders send by their actions and decisions. Crucial aspects of EPA's contracts management behavior reflect and communicate this "Mission vs. Management" attitude. Outside the Agency, however, there are strong forces that expect EPA to accomplish both. The public and Congress expect the Agency to protect the environment and public health, and they empower the Agency to make appropriate scientific and technical judgments. They also provide EPA's resources and fully expect wise stewardship of public funds. The Agency has no mandate to cut corners or circumvent the law.

The pervasiveness of the old paradigm is documented throughout this Report. It consistently appears as a root cause of individual problems and is, therefore, the object of many of our recommendations.

We believe that the Agency's current way of thinking on contracts management may threaten the public trust; it warrants implementing the recommendations contained in this Report and monitoring for continuous improvement thereafter. As difficult as cultural change may be, it is absolutely imperative in this case. EPA managers must change their cultural disposition or continue to risk not only the loss of their professional reputation but also public confidence in the Agency.

The new paradigm envisioned by line staff we spoke with would recognize that the dichotomy between mission and quality contracts

management is a false one. Quality contracts management is a necessary predicate if EPA is to fulfill the public trust to carry out its mission to protect human health and the environment. Agency leadership must effectively communicate this new way of thinking in every aspect of organizational behavior. Furthermore, we believe that a true shift in the Agency's way of thinking will produce significant benefits in every other area of management in EPA and enable us better to serve the public with our highest quality work.

The Committee's staff went to the front lines of the organization to ask questions about values, attitudes, and perceptions -- to ascertain the facts on EPA's contracts management process and culture. The staff used open-ended brainstorming techniques with focus groups around the country to present people with an opportunity to provide innovative and creative ideas about contracts management. Unlike many other reports, this Report focuses on underlying causes and systemic solutions rather than on identifying problems or weaknesses of individuals or specific organizations. This Report is not an audit or a prescription for a quick-fix to all problems. Where appropriate, we do specify action officials and due dates, but we recognize that many of the most salient recommendations will require many months and even years to achieve.

We urge that Agency readers of this Report apply its contents to the broad perspective of Agency management. We believe that deficiencies in contracts management are symptomatic of general problems in managing cross-cutting Agency functions. Much of what is learned regarding contracts management deficiencies apply equally to other aspects and responsibilities of EPA management.



# **EXECUTIVE SUMMARY**

## **I. BACKGROUND**

On March 4, 1992, EPA's Acting Assistant Administrator for Administration and Resources Management, Christian R. Holmes, testified before the Senate Subcommittee on Oversight and Investigations concerning the Agency's management of the Computer Sciences Corporation (CSC) contract. Mr. Holmes expressed the Agency's commitment to "...resolve these fundamental questions about EPA's current procurement strategy...to conduct a thorough review...to determine whether it provides an appropriate balance between program performance, administrative efficiency, and management controls." This Report is the result of that commitment.

## **II. APPROACH**

The Administrator organized the Standing Committee on Contracts Management (the Committee) and directed it to examine the problems with contracts management in EPA and develop comprehensive recommendations for improvement. In order to evaluate contracts management, the Committee's staff considered all phases of the contract process, from pre-award to closeout. The Committee's staff conducted a wide-ranging inquiry into the factors and forces that affect quality contracts management -- internal, external and cultural -- using "Total Quality Management" (TQM) principles and practices. The Committee's staff conducted numerous interviews and organized focus groups in EPA Headquarters, Regions, research laboratories and field offices, and

obtained suggestions and comments from a contracts management hotline and suggestion box. (See Appendix H.) In addition, the staff interviewed key contracting officials of six federal agencies, former EPA officials and representatives of contracting organizations. The Committee also convened a Federal Contracts Management Advisory Board (FCMAB) for the purpose of reviewing its analysis, options and decisions. (See Appendix C.)

### **III. RESULTS IN BRIEF**

The Committee staff's data-gathering efforts demonstrated that EPA employees are genuinely committed to the success of EPA's mission. However, a recurrent theme mentioned by those we interviewed and those in the focus groups was that cultural attitudes are an underlying cause of problems uncovered in the contracts management area. The Committee's staff believes that contracts management problems are a symptom of the general difficulties experienced by EPA in managing cross-cutting functions.

Contracts management at EPA lacks: (1) management accountability; (2) adequate planning; (3) adequate guidance; (4) adequate training; (5) appropriate allocation of human and financial resources; (6) contracting mechanisms which adequately protect EPA's interests; and (7) adequate communication. These deficiencies are the result of an Agency-wide culture that has under-valued good contracts management practices and have in turn led to a number of specific problems in contracts management. These include improper use of contractors to perform inherently governmental functions and personal services; improper access by contractors to sensitive, and in some cases, confidential, information systems; conflicts of interest; loss of in-house EPA expertise to plan and



oversee contracted activities, and incurrence of improper and excessive contract costs.

The Committee's staff recommends a number of changes in structure, education, and accountability aimed at reforming the negative cultural attitude toward contracts management, as well as measures to curb abuses and strengthen areas of vulnerability.

#### **IV. PRINCIPAL FINDINGS**

##### **A. LOW PRIORITY OF CONTRACTS MANAGEMENT**

In order to implement its myriad statutory responsibilities, EPA has relied heavily on the services of the private sector. The Agency's success depends to a large extent on the performance of its contractors. Award and management of contracts is therefore a matter of the highest importance. The underlying cause of the most significant deficiencies and vulnerabilities that the Committee's staff found in contracts management<sup>\*</sup> is an Agency culture that does not accord sufficient value to contracts management. The idea that quality contracts management is at odds with the Agency's mission to protect the environment has been allowed to flourish and is evidence of a lack of management responsibility. The Committee's staff strongly rejects this dichotomy. On the contrary, if the Agency is to be successful in its mission, managers must realize that aggressive and scrupulous contracts management is essential to assure that

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<sup>\*</sup>Problems in the management of contracts that have already been awarded cannot be divorced from procurement problems, which occur earlier in the process. Consequently, this Report addresses all phases of the procurement and contracts management process, from planning and placement concerns at pre-award through to evaluations and audits after award. The term "contracts management" is intended to encompass all of these activities.

resources are being applied as effectively as possible to achieve the Agency's mission of protecting the public health and the environment.

## **B. MAJOR CONTRACTING IMPROPRIETIES**

The Committee's staff has confirmed many of the findings of previous studies by the General Accounting Office (GAO) and EPA's Office of the Inspector General (OIG) of recurring improprieties in the performance of EPA contracts including: improper use of contractors to perform personal services and inherent governmental functions; improper access by contractors to sensitive and confidential information; conflicts of interest; loss of in-house expertise, and incurrence of improper and excessive costs.

Information developed by the Committee's staff through interviews and focus groups indicates that these improprieties are the result of systemic deficiencies in contracts management and to general difficulties in managing cross-cutting functions in an organization set up along single media and statutory lines. Many of the deficiencies, in turn, can be traced to the low stature of contracts management in the Agency's culture.

## **C. UNDERLYING CAUSES OF CONTRACTS MANAGEMENT PROBLEMS**

This Report focuses on the following interrelated areas that are the sources of and keys to the improvement of contracts management within the Agency.

## **1. Management Infrastructure**

**a. Management Accountability** -- The current division of contracts management responsibilities in the Agency allows managers to cut corners on contracts management. Neither the program offices nor the Procurement and Contracts Management Division (PCMD) is exclusively held accountable for contracts management problems; each is able to blame the other for these problems. Accountability and reward systems that value program outputs more highly than cross-cutting management functions also contribute substantially to this problem.

**b. Contracts Management Structure** -- The Committee's staff has found that the roles and responsibilities of the employees engaged in actual contracts management work -- Contracting Officers (COs), Project Officers (POs), Work Assignment Managers (WAMs), and Delivery Order Project Officers (DOPOs) -- are not clearly understood. This has led to a diffusion of responsibility for various components of contracts management with the result that no one is ultimately responsible.

**c. Visibility and Support of Contracts Management** -- EPA contracts management suffers from a lack of visibility and functional support. PCMD is the primary EPA organization responsible for contracts management. It is one of six divisions within the Office of Administration (OA), which in turn is one of six program offices reporting to and competing for the attention of the Assistant Administrator for Administration and Resources Management (OARM). Thus, the AA's attention to EPA's business functions is necessarily diffused. The status and attention given to PCMD is not commensurate with the importance of its function and impairs its ability to direct the management of EPA's contracts.

## **2. Resources**

Although EPA has relied on contractors to accomplish its burgeoning workload, the number of EPA contracts management and support personnel has not kept pace with this increasing dependence. More importantly, EPA has not comprehensively and systematically analyzed the functions it should and should not be contracting out. As a result, contracts have been awarded that are vulnerable to abuse.

In addition, EPA does not undertake the necessary workload and workforce planning to determine the proper number and appropriate qualifications of its contracts management workforce, including its management, technical, financial, legal, administrative and support components. Thus, the Agency often places into contracts management positions scientists, engineers or other professionals who are neither interested in nor qualified to manage contracts and who are frustrated by their inability to use their professional skills and training fully. Moreover, because contracts management is not generally recognized as an important function at EPA, the Agency lacks a professional career ladder that integrates the skills necessary to the contracting profession in EPA. Also, contracts management is not adequately represented or acknowledged within EPA's recognition and rewards system. As a result, technical staff may come to view contracts management as a career liability.

## **3. Inadequate Training and Guidance**

Too often, EPA's policy and guidance are inconsistent, not readily accessible, or simply unclear. Some guidance documents are not passed down through the chain-of-command and do not reach the front-line

personnel who need them most. In addition, contract managers do not receive adequate training in the fundamentals of government contracting. The Committee's staff found widespread dissatisfaction with the training, which is often described as too theoretical and unrelated to the practical aspects of day-to-day contracts management. As a result of deficiencies in training and guidance, many contract managers have been unable successfully to control contract performance and cost.

#### **4. Lack of Planning**

Although a number of different contract types are available to the Agency, each with particular advantages and disadvantages, EPA heavily emphasizes use of cost-reimbursement contracts. This type of contract is weak in the area of cost control incentives and requires substantial time and resources to manage properly. In addition, without well-crafted, specific statements of work in work assignments and delivery orders, this type of contract is open to abuse in the area of personal services. While cost-reimbursement contracts have a legitimate role, the Agency has not regularly and adequately evaluated alternative contract choices to determine if other types may be more appropriate or easier to manage.

#### **5. Lack of Clarity on Allowable Costs**

Congress and OIG have questioned EPA regarding a wide variety of claimed indirect contractor costs, including Christmas parties and Rolex watches. Under federal regulations, reasonable employee morale costs are allowable. However, there is no clear policy, either in regulations or in

guidance, what costs are reasonable and has failed to exercise its discretion to impose specific constraints.

## **V. RECOMMENDATIONS**

In order to achieve quality contracts management, EPA must change its focus from mission accomplishment at virtually all costs to mission accomplishment through quality contracts management. To accomplish this, the Committee's staff recommends a number of systemic and process changes. A chart summarizing those recommendations appears at the conclusion of this Report.

### **A. SYSTEMIC CHANGES**

These recommendations are designed to improve contracts management by strengthening management accountability, organizational structure, allocation of resources, and use of human resources.

#### **1. Management Accountability**

In order to improve accountability, the Committee's staff recommends a restructuring of contract management responsibilities. Placement and contract administration functions would be separated; a central Procurement Division in Headquarters would be responsible for placement of national contracts. Administrative contracting officers would be placed in each program office, Region, and major EPA field site; accountability for contract administration would ultimately rest with a senior procurement official (SPO) located in each of those offices.

However, Headquarters would continue to have oversight responsibility (including authority to veto contract extensions, option years and re-procurements) and would issue all CO warrants and terminate or limit warrants if contract mismanagement occurs.

In addition, the number of levels in contract administration would be reduced to further focus accountability. The new organization is portrayed in Appendix F (Organizational Charts). Restructuring of the roles and responsibilities of contract administration personnel would be accomplished through implementation plans developed by each Region and program office and approved by the Headquarters contracting office.

To ensure the input of pertinent expertise throughout the contracts management process, the Committee's staff also recommends the formation of quality contracting teams for individual contracts. These teams would include the Placement Contracting Officer (PCO), the Administrative Contracting Officer (ACO) and his or her technical representative, the program office manager, legal counsel, and a cost analyst. The team will meet when appropriate during the procurement cycle and be available for consultation in their areas of specialization as the need arises. Each major contract would have a contracts management plan that would assure that contract administration issues, including planning for needed resources, are resolved among key stakeholders.

While most of the Committee staff's recommendations aim to improve up-front quality, programmatic audits will remain essential. The Committee's staff recommends a number of structural changes and process improvements to the Agency's audit follow-up process in order to ensure that effective corrective action is implemented in response to OIG and GAO audits.

## **2. Management Infrastructure**

As part of its effort to increase accountability and to ensure that contracts management receives adequate attention from management at all levels, the Committee's staff recommends a major reorganization in EPA's management structure. We recommend that the Agency's two key business functions -- resource management and acquisition, and assistance -- become the sole focus of an Assistant Administrator-level office (to be known as the Office of Acquisition, Assistance and Finance (OAAF)), headed by the Chief Financial Officer. This management alignment would not only allow for proper attention to contracts management but to money matters in general, in line with the Chief Financial Officers' Act (CFOA). This innovative alignment would put EPA in the forefront of agencies implementing this important legislation. Rather than being merely a highly specialized AA-ship created in response to a particular problem, we believe the creation of OAAF would represent a strong Agency commitment to perform effectively what is undoubtedly one of the most fundamental cross-cutting/cross media activity in the Agency. Other functions of the current OARM would be consolidated in a new Office of Human Resources, Facilities, and Information Management. (See Appendix F.)

As shown in Appendix F, OAAF will consist of the Office of Acquisition and Assistance Management (OAAM) and the Office of the Comptroller. A key unit within OAAM would be the Policy, Evaluation and Training Division (PETD). PETD should be a strong, centralized organization that would provide strong, effective policy development and training. The Division's responsibilities would also include strategic planning on contracts management, workload models, workforce planning, development of quality performance measures, quality assurance and



quality control review, and maintenance of communications and information management systems for acquisition and assistance activities.

Implementation of this reorganization is important to the success of most of the major systems and process recommendations in this Report. They should be spearheaded by an Assistant Administrator who has sufficient time, authority and resources to devote to comprehensive improvement of all EPA components necessary to quality contracts management.

### **3. Allocation of Resources**

The Committee's staff believes that a systematic Agency-wide effort is required to determine which functions and projects should be performed by EPA personnel and which should be contracted out. We recommend that the budget process be used to make these decisions. The ultimate decision should be based on consideration of issues such as inherently governmental functions, personal services, and cost effectiveness.

The Agency currently does not have an accurate idea of what resources are required to execute its various functions, including contracts management. The Committee's staff recommends revision and increased use of workload models and other tools to document time and resources allocated to contracts management. Only if the Agency systematically assesses its needs can it intelligently request and allocate resources.

### **4. Human Resources**

The Committee's staff believes it is essential that EPA attract and retain qualified people in contracts management positions. Specific

recommendations address workforce planning, recruiting, training, career management, and rewards and recognition. The Committee's staff also recommends an expanded role for legal counsel in contracts management.

## **B. CONTRACT PROCESSES**

The restructuring of EPA's business functions will establish the necessary organizational foundation for major improvements to EPA's contract processes.

A strong management presence is required to exert the necessary leadership for a comprehensive national contract management program. The Committee's staff recommends that the policy division in the proposed OAAM take the lead in major improvements in the clarity, accessibility, and content of Agency policy and guidance. The guidance would clarify Agency policy on such matters as control of contractor performance, avoidance of contractors performing inherently governmental functions and personal services, contractor conflicts of interest, and allowability of indirect costs.

The new policy division would also be tasked with revitalizing the Agency's training programs in contracts management. Training courses need to be upgraded and tailored to specific contract roles and responsibilities and should address matters such as choice of contract vehicle, conflicts of interest and other ethics issues, cost estimation, invoice review, and property management.

The Report also contains a number of specific recommendations designed to increase control over contractor costs. Among the recommendations are increased use of independent governmental cost estimates, improved review of invoices, and clarification of allowable costs.

We also recommend enhanced use of sanctions against improper conduct by contractors, and that the Agency consider imposing penalties and interest for improper contractor claims that are paid and later disallowed.

### **C. TRACKING IMPLEMENTATION**

The Committee's staff recognizes that the comprehensive change envisioned in this Report is difficult. Its implementation will require continued vigilance and validation. Accordingly, we recommend a reporting mechanism to track implementation of the Report's recommendations.



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**L. A Checklist for Managing Contracts in Furtherance of the Agency's Mission**

## **DIRECTORY OF ACRONYMS**

<b>AA</b>	Assistant Administrator
<b>ACO</b>	Administrative Contracting Officer
<b>ADP</b>	Automated Data Processing
<b>BD</b>	Budget Division
<b>CAAC</b>	Civilian Agency Acquisition Council
<b>CB</b>	Compliance Branch
<b>CBI</b>	Confidential Business Information
<b>CERCLA</b>	Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Superfund)
<b>CFO</b>	Chief Financial Officer
<b>CFOA</b>	Chief Financial Officers' Act
<b>CFR</b>	Code of Federal Regulations
<b>CLB</b>	Contract Law Branch
<b>CMD</b>	Contracts Management Division
<b>CO</b>	Contracting Officer
<b>COI</b>	Conflict of Interest
<b>COTR</b>	Contracting Officer's Technical Representative
<b>CSC</b>	Computer Sciences Corporation
<b>DCAA</b>	Defense Contract Audit Agency
<b>DO</b>	Delivery Order
<b>DOD</b>	Department of Defense
<b>DOE</b>	Department of Energy
<b>DOPO</b>	Delivery Order Project Officer
<b>EPAAR</b>	EPA Acquisition Regulations
<b>FAR</b>	Federal Acquisition Regulations
<b>FCMAB</b>	Federal Contract Management Advisory Board
<b>FIFRA</b>	Federal Insecticide, Fungicide, and Rodenticide Act
<b>FMD</b>	Financial Management Division
<b>FMFIA</b>	Federal Managers' Financial Integrity Act
<b>FOIA</b>	Freedom of Information Act
<b>FTE</b>	Full-Time Equivalent
<b>G&amp;A</b>	General and Administrative Expenses
<b>GAD</b>	Grants Administration Division
<b>GAO</b>	General Accounting Office
<b>GFP</b>	Government-Furnished Property
<b>GSA</b>	General Services Administration
<b>IG</b>	Inspector General
<b>IGE</b>	Independent Government Estimate
<b>IGF</b>	Inherently Governmental Function
<b>IP</b>	Implementation Plan
<b>IQUE</b>	In-Plant Quality Evaluation Program
<b>JOFOC</b>	Justification for Other than Full and Open Competition

<b>KSAs</b>	Knowledge, Skills, and Abilities
<b>LAN</b>	Local Area Network
<b>M&amp;O</b>	Management and Organization Division
<b>MCC</b>	Management Control Coordinator
<b>NASA</b>	National Aeronautics and Space Administration
<b>NCPD</b>	National Contracts Payment Division
<b>NCPS</b>	National Contracts Payment System
<b>OA</b>	Office of the Administrator
<b>OAAF</b>	Office of Acquisition, Assistance and Finance
<b>OAAM</b>	Office of Acquisition and Assistance Management
<b>OARM</b>	Office of Administration and Resources Management
<b>OC</b>	Office of the Comptroller
<b>OGC</b>	Office of General Counsel
<b>OHRFIM</b>	Office of Human Resources, Facilities and Information Management
<b>OHR</b>	Office of Human Resources Management
<b>OIG</b>	Office of the Inspector General
<b>OIRM</b>	Office of Information Resources Management
<b>OMB</b>	Office of Management and Budget
<b>OPM</b>	Office of Personnel Management
<b>OPPE</b>	Office of Policy, Planning and Evaluation
<b>OPPTS</b>	Office of Pollution Prevention, Pesticides and Toxic Substances
<b>ORC</b>	Office of Regional Counsel
<b>ORD</b>	Office of Research and Development
<b>OSD</b>	Office of Suspension and Debarment
<b>OSW</b>	Office of Solid Waste
<b>OSWER</b>	Office of Solid Waste and Emergency Response
<b>OW</b>	Office of Water
<b>PAS</b>	Presidentially Appointed, Senate-Confirmed
<b>PCMD</b>	Procurement and Contracts Management Division
<b>PCO</b>	Placement Contracting Officer
<b>PD</b>	Procurement Division
<b>PEB</b>	Performance Evaluation Board
<b>PETD</b>	Policy, Evaluation and Training Division
<b>PO</b>	Project Officer
<b>PPAS</b>	Personal Property Accounting System
<b>PPS</b>	Procurement Policy Staff
<b>PSA</b>	Preliminary Site Analysis
<b>QAT</b>	Quality Action Team
<b>RA</b>	Regional Administrator
<b>RACF</b>	Resource Access Control Facility
<b>RCRA</b>	Resource Conservation and Recovery Act
<b>RMD</b>	Resource Management Division
<b>RTP</b>	Research Triangle Park, North Carolina
<b>S&amp;D</b>	Suspension and Debarment

<b>S&amp;E</b>	Salaries and Expenses
<b>SBA</b>	Small Business Administration
<b>SCCM</b>	Standing Committee on Contracts Management
<b>SES</b>	Senior Executive Service
<b>SOW</b>	Statement of Work
<b>SPO</b>	Senior Procurement Officer
<b>TQM</b>	Total Quality Management
<b>TSCA</b>	Toxic Substances Control Act
<b>TOSS</b>	Technical and Operational Services Support Contract
<b>TSS</b>	Technical Support Services
<b>VMR</b>	Voluntary Management Reduction
<b>WA</b>	Work Assignment
<b>WAM</b>	Work Assignment Manager

## I. INTRODUCTION

This Report was precipitated by an audit of an EPA automated data processing (ADP) contract.<sup>1</sup> While the audit generated substantial concern about EPA's management of that contract, it also made clear that contracts management at EPA suffered from pervasive and systemic deficiencies. Accordingly, the Administrator established the Standing Committee on Contracts Management (the Committee). The Committee consists of senior officials from EPA and other federal agencies (see Appendix A), supported by a multi-disciplinary staff from EPA Headquarters, Regions and the Department of Justice (see Appendix B). The Committee and its staff were directed to identify problems in EPA's contracts management process, to examine external, internal and cultural barriers to improving that process, and to propose comprehensive and enduring corrective actions to improve and maintain quality and integrity in EPA contracts management.

The Committee's staff approached its task as an opportunity to apply Total Quality Management (TQM) concepts and tools to analyze EPA's contracts management process. After initially identifying a number of problems in the contracts management process, the Committee's staff set out to (i) identify potential barriers to improved quality and (ii) recommend a range of near-term fixes and long-term opportunities for continuous improvement and problem prevention.

The Committee's staff used a number of sources in gathering the data for this Report. The staff began by examining recent reports prepared

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<sup>1</sup>Office of Inspector General Report of Audit, EPA's Management of Computer Sciences Corporation Contract Activities, Audit Report Number E1NME1-04-0169-2100295, March 31, 1992.

by the OIG, GAO, and EPA concerning EPA contracts management, to evaluate the effectiveness of the solutions adopted in response to the problems identified (see Appendix D for Source Documents, Information and References). The Committee's staff found that some valid solutions recommended in the past were not implemented for a variety of reasons. Given the Agency's intensified commitment to correcting long-standing contracts management problems, the Committee's staff recommends reconsideration and thorough implementation of some of these solutions.

The Committee's staff also examined "Problem Assessments" prepared by each EPA Regional and Headquarters office at the Administrator's request. The Problem Assessments addressed present and potential problems in contracts management (see Appendix I for a detailed summary of the Problem Assessments).

In accordance with TQM Principles, the Committee's staff sought the views of a significant cross-section of EPA personnel involved in contracts management. In the course of individual interviews and focus groups conducted in Headquarters, Regional offices and other EPA facilities, the Committee's staff interacted with individuals closely connected to the contracts management system, who thus could provide information indispensable to proper evaluation and improvement of this system. The focus groups gave front-line COs, POs, WAMs, and DOPOs the opportunity to express freely their views on the contracts management world they work in daily. The staff assimilated the focus group information to identify relevant trends reflected in the Report. In addition to the usual data-gathering and analytical techniques, individual interviewees were challenged to identify root causes and to look outside the existing paradigms and culture for ideas to improve the contracts management process.

To broaden the data-gathering effort to include all persons who might have information or ideas on significant contracts management problems, the Committee's staff instituted a hotline and suggestion box. These mechanisms yielded over 200 suggestions and observations, which were considered in developing this Report (see Appendix H).

The Committee's staff interviewed contracting specialists at several other federal agencies. We attempted to determine whether these agencies had experienced problems similar to EPA, and if so, what efforts to solve those problems have been successful. We also met with staff of some congressional committees that have shown an interest in contracts management at EPA. In addition, as a subsequent step to solicit external quality guidance, the staff convened a Federal Contract Management Advisory Board for the purpose of reviewing our analysis, options and recommendations (see Appendix C).

Finally, the Committee's staff investigated or participated with appropriate offices in the investigation of a number of incidents and issues that reflect on contracts management and related problems at EPA. Where pertinent, the results of these investigations appear as case studies at the end of this Report (see Appendix K) and are referenced in the Report. See Appendix E for a detailed account of the approach and methodology used in the preparation of this Report.

## **A. GENERAL MANAGEMENT ISSUES**

As the Committee's staff examined the contracts management problems, we found that past attempts to solve the problems had been only partially successful. The Committee's staff asked people involved in the

contracts management processes why they believed there were contracts management problems.

A recurring theme in focus groups and interviews was that there was a continuing tension between program outputs and quality contracting, and that the problems in contracts merely reflected the lower priority assigned to these management and administrative tasks. It is apparent that weaknesses in EPA's contracts management are in large part a function of their cross-programmatic nature. The Agency generally does a good job of managing for program outputs. It does not do as well in managing areas outside the scope of single program accomplishments. However, cross-programmatic management has improved over the last few years. The Agency is learning how to better manage those areas where duties and responsibilities lie in more than one program. The work of the Committee's staff, its Report and recommendations are important additional steps in this direction.

The Agency's culture, organizational structure, leadership, and even the oversight by Congress and the Office of Management and Budget (OMB), all tend to perpetuate a single-media approach to problems. One of the many congressional committees that oversees EPA's areas of responsibility may focus on and question EPA about what the Agency is accomplishing or what it needs in one area, such as the Clean Air Act. Then a different congressional committee questions EPA about another issue. The Agency is so accustomed to looking at and solving problems in specific areas that it has difficulty in effectively evaluating and acting upon general multi-media and cross-media areas when problems occur. EPA frequently treats the symptoms and fails to understand their broader underlying cause.



To understand the general management issue, it is necessary to examine the internal, external, and cultural factors influencing the Agency.

The internal factors affecting management are organizational in nature and hark back to the Agency's formation. Departments from separate federal agencies were brought together in the EPA to provide a comprehensive approach to environmental protection. For the most part, these separate departments continued to perform duties similar to those that they had previously performed. As Congress gave the Agency additional responsibilities, the Agency continued to organize along environmental media or statutory authority lines. This structure continues.

The single-media method of organization enables the Agency to manage for specific program accomplishments but hinders the management of cross-cutting activities, such as long and short-term strategic planning, priority setting, routine evaluation of systems and processes, human resources management, communications, information systems, legal counseling, and contracts management. In addition, position in the organizational hierarchy is vital to the authority and influence required to implement cross-cutting functions.

The introduction of Total Quality Management, strategic planning, multimedia enforcement, geographic and other cross-media initiatives has raised managers' awareness of cross- program management problems and have enhanced EPA management's ability to deal with these problems. This Report recommends that the Agency focus that awareness and enhanced management ability on the problems of contracts management.

The Committee's staff believes that a cultural attitude that holds contracts management in low esteem is the greatest factor inhibiting EPA's ability to manage its contracts. The Agency culture considers contracts management, like other cross-cutting functions, to be of secondary

importance and, more often than not, obstacles preventing the speedy accomplishment of program goals. Ironically, many other organizations both inside and outside of government consider these types of management activities to be crucial to accomplishing their goals.

In EPA's culture and structure, there is no single office or program that can be held responsible for the management weaknesses. It is a situation where no one, and yet everyone, is responsible. Management at EPA constantly reinforces by its actions the cultural norm that the program outputs are paramount. The major awards that the Agency bestows on its managers are most often based on outputs in one program-specific area and not the overall quality of all the activities that an individual is managing or on whether those activities conform to applicable rules, regulations, policies and procedures. There are so many definitions of success that there may be severe deficiencies in one part of a manager's program at the same time that he or she is being awarded or promoted (see Appendix K, Case Study 1). This reinforces the idea that individual accomplishments or managing a single function is the only measure of success.

EPA has grown rapidly over the last twenty years and has evolved from a small agency with a few thousand employees and only a few statutory responsibilities to a large agency with 17,000 employees and many statutory responsibilities. The general problem with multi-media and cross-cutting functions indicates that EPA's management culture has not adapted to the growth and increasing complexity of the Agency. The environmental problems that the Agency must address, the size of the budget, and the size of the Agency require management with the breadth and professionalism to solve not only the specific media problems but also those problems that cut across media divisions, such as the geographic

enforcement initiatives and the toxic release reduction programs. EPA management must recognize that there can be no tradeoff between sound management practices and program outputs; the Agency must accomplish both.

The Agency is beginning to recognize the importance of this principle. For example, most employees have received training in TQM and, in a cross-media environmental initiative, the Administrator has directed that each Region perform a risk assessment and begin to concentrate its enforcement and regulatory resources in those areas where there is the greatest risk.

TQM teaches that there must be a continuing commitment made from the top down in order to make lasting changes in an organization. It also teaches that change is to be expected and an organization needs to conduct routine self-evaluations to determine which systems are working well and which ones should be improved. EPA's managers have proven themselves to be bright, capable individuals; the challenge of this Report is that they apply their intelligence and creativity to making those changes fundamental to ensuring quality contracts management.

## **B. CONTRACTS MANAGEMENT ISSUES**

EPA's mission involves a diverse and wide-ranging scope of responsibilities to protect human health and the environment. To carry out that mission, EPA depends heavily upon the services of contractors. Accordingly, quality management and oversight of contractors is essential to the implementation of the Agency's mission. Unfortunately, a number of serious problems have plagued contracts management at EPA. The most highly controversial and damaging public perceptions of the Agency's

management of its contract resources are that: 1) EPA has let contractors assume operation of critical functions that are inherent to the government; 2) contractors are improperly used to provide personal services; 3) EPA has lost, or never acquired, the expertise required to oversee certain contracted activities; 4) EPA does not adequately control contractor performance and costs; 5) EPA has created management conditions that allow certain EPA contractors, especially in information management areas, improper access to confidential business and other sensitive information; and 6) the Agency has not properly protected against real or potential contractor conflicts of interest.<sup>2</sup>

This Report is organized into three major substantive sections. Section II sets forth the major problems that have resulted from deficiencies in EPA's contracts management processes. Section III addresses the internal structures and processes that are underlying causes of these problems. Section IV sets forth the recommendations for institutional and process improvements designed to resolve and avoid problems in contracts management.

The analytical results and recommendations of this Report strongly reflect the voice of the people who actually perform the work, as well as the intelligence, creativity and honesty of a broad range of managers and staff throughout the Agency. Based on this input from the front-line staff and their customers, the Committee's staff believes this Report has the potential of spurring the types of true cultural changes needed at EPA.

Virtually all of the recommendations in this Report are aimed at changing cultural attitudes and ensuring accountability in contracts

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<sup>2</sup>GAO/RCED, 92-45, "EPA Has Not Corrected Long Standing Contract Management Problems," October 1991. GAO/RCED, 89-57, "Superfund Contracts: EPA's Procedures for Preventing Conflicts of Interest Need Strengthening," February 1989.

management. Many are focused on elevating the stature of contracts management at EPA, and would require reorganization of basic management structures and reallocation of resources. The need for better training and utilization of human resources is also a major theme. Although most of the recommendations are for changes in internal EPA processes and can be implemented within existing authority, a few may require modifications in federal regulations.

Cultural change is a slow and difficult process. This change will first and foremost require "buy-in" by the Agency into the Report and its recommendations. The Committee staff's total quality approach in developing this Report is the first step to achieving acceptance. Second, EPA management must foster an ethic that permeates our responsibilities in contracts management activities. Third, EPA management must commit itself to track the implementation of these recommendations. Without extensive follow-up and validation, the Agency is vulnerable to recurring and continued contracts management problems. Finally, the current managerial culture of the Agency if left unchanged will gradually undermine all the best intentions for improvement, regardless of the initial appearance of commitment to its objectives.

Significant change in EPA culture is the sine qua non for lasting improvement in contracts management. Each EPA manager is personally responsible for making this change a reality.



## II. CONTRACTS MANAGEMENT PROBLEMS

The purpose of this Report is not to identify or to provide a list of EPA contracts management problems. Most of those problems are already well identified in various OIG and GAO reports as well as other EPA internal management studies. Problems are listed or categorized only to facilitate the analysis of root causes, which in turn will serve to document the need for and to support the solutions and recommendations of the Report.

### A. INHERENTLY GOVERNMENTAL FUNCTIONS

One of the most highly controversial and damaging perceptions of the Agency's management of its contracts is that EPA has allowed contractors to assume operational responsibility for functions that are inherently governmental in nature (IGF).<sup>1</sup> There have been allegations of contractors performing IGF at EPA, or at least creating that potential.<sup>2</sup> Auditors have noted that EPA is highly "leveraged" with contractors, and

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<sup>1</sup>The overall federal policy regarding IGFs is established by OMB's Circular No. A-76, Performance of Commercial Activities. This circular requires that any and all governmental functions be performed in-house, regardless of cost.

The Circular defines a governmental function as one which is so intimately related to the public interest as to mandate performance by government employees. These functions include those activities which require either: 1) the exercise of discretion in applying government authority, or 2) the use of value judgment in making decisions for the government. Despite this definition, it is often difficult to determine precisely what an inherent governmental function is, and even GAO concluded that the boundaries are often unclear. The distinctions become even less clear when drawing the line between performing governmental functions which may not be contracted out, and "supporting or assisting" the performance of those functions.

EPA has issued an Order that addresses this issue, and established Agency policy that prohibits contracting for certain activities at EPA (EPA Order Number 1900.2, October 22, 1990). The Order discusses 17 categories of activities for which contracting out is forbidden. In addition, the Order identifies 11 types of activities which, when performed under contracts may place EPA in a vulnerable or sensitive position if adequate controls are not in place, and sets forth guidelines for these controls.

<sup>2</sup>Office of Inspector General Report of Audit, EPA's Management of Computer Sciences Corporation Contract Activities, Audit Report Number E1NME1-04-0169-2100295, March 31, 1992.

that the high proportion of contractors to EPA employees and the expansion of the tasks being contracted for creates the risk of contractors performing IGF (See Appendix K). From our inquiry, it appears that some of the greatest risks occur in those areas where contractors are co-located with EPA employees.<sup>3</sup>

Some of the real risks attendant to the heavy use of contractors at EPA are the loss of or failure to acquire or maintain governmental expertise, the loss of control, and the loss of institutional memory. These losses affect not only the Agency's ability to effectively oversee contractor performance but also its ability to replace contractors with skilled and knowledgeable federal employees. These risks are heightened when contractors are used to perform the sorts of tasks which go to the essence of EPA's mission -- those tasks most likely to be designated as IGFs.

It appears that EPA uses contractors in areas where the public might expect to find EPA employees (see Appendix H: Suggestion Box and Hotline Summaries), such as in the main EPA library, the Public Information Center, on various hotlines (e.g., the Superfund and Resource Conservation and Recovery Act [RCRA]) and in program docket offices, to cite just a few examples.<sup>4</sup> In addition, use of contractors to prepare draft guidance, regulations and other policy documents can be troublesome and raise the need to set up extra controls to make sure the roles of the contractors are clear. Use of contractors for these functions raises the issue of an appearance of contractors performing inherently governmental functions and may raise credibility problems for the Agency and conflict of interest concerns for the contractor.

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<sup>3</sup>Although on-site contractors present a significant risk of being perceived as EPA employees and of performing IGFs, locating contractors elsewhere is impractical for some tasks (e.g., working in a lab, washing equipment) or is less efficient. The use of contractors for these kinds of tasks should be reevaluated, and if contractors are used, then strong safeguards must be put in place.

<sup>4</sup>It should be noted that one of the elements to be considered in determining whether it is appropriate to contract out an activity is "the likelihood that the public would perceive the function as one that should be performed by government personnel." GAO, Inherently Governmental Functions: Policy Letter, 56 FR 65279 (December 16, 1991).



## **B. PERSONAL SERVICES**

Another critical problem cited is that EPA frequently has administered contracts in such a manner that contractors have been engaged in personal services, in contravention of regulations.<sup>5</sup> In these cases, the distinction between government and contractor employees is blurred, thus undermining effective management oversight of the contract.<sup>6</sup> In addition, contract personnel performing personal services may exercise undue influence on EPA decisions, including the award of future contracts. Pervasive use of personal services fosters the perception, if not the reality, that contractors are in charge of EPA.

## **C. CONFIDENTIAL AND OTHER SENSITIVE INFORMATION**

Contractor-related problems with EPA's information systems include potential for loss of information (availability), potential for corruption of information (integrity), and potential for unauthorized disclosure of confidential information (confidentiality) (see Appendix K, Case Study 3). These problems were not widely acknowledged in either our field and Headquarters interviews or in the focus groups; however, several EPA offices did identify these as potential Agency contract vulnerabilities in response to the Administrator's March 10, 1992 memorandum (see Appendix I). In addition, these

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<sup>5</sup>CSC Audit (March 31, 1992). The FAR prohibit the use of contractor personnel for "personal services" except where specifically authorized by statute. The regulations define personal services as those which make the "contractor personnel appear, in effect, [as] government employees." 48 CFR §37.101. The FAR further state that an employer-employee relationship occurs when, as a result of the contract's terms or manner of administration during performance, "contractor personnel are subject to relatively continuous supervision and control of a government officer or employee." 48 CFR §37.104(c).

<sup>6</sup>Federal law requires that government hiring (except where otherwise specified) be accomplished in accordance with Civil Service law. Thus, if contractor personnel perform and are treated as government employees, the Civil Service laws are violated.

problems were identified in OIG's most recent CSC Audit and in several other OIG and GAO reports.<sup>7</sup>

#### **D. CONFLICTS OF INTEREST**

Some of the Committee staff's interviews, focus groups and Agency problem assessments identified conflict of interest (COI) as a potential vulnerability . The CSC audit and past GAO reports also raised a number of concerns about COI. The CSC audit revealed that CSC personnel participated in the preparation of 20 out of 26 delivery orders reviewed by OIG.<sup>8</sup> This practice creates the appearance that CSC assigned itself work, especially for complex delivery orders where EPA personnel did not have the expertise necessary to monitor CSC's work properly.

In the Superfund program, conflicts can arise when an EPA contractor has a past or present business relationship with a potentially responsible party, or where a contractor recommends a cleanup method or technology for which he or she holds a patent or is a likely party to conduct the recommended cleanup.<sup>9</sup> The GAO Report raised concerns about EPA's reliance on "self-reporting" by Superfund contractors to identify potential COI problems. In October 1991,<sup>10</sup> GAO issued a follow-up report

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<sup>7</sup>OIG Special Review (September 1991); CSC Audit, March 31, 1991. According to OIG, EPA handles essentially four types of confidential data: 1) confidential business information (CBI); 2) Privacy Act information; 3) information for internal EPA use only; and, 4) enforcement-sensitive information. Unlike CBI and Privacy Act information, there is no clear agreement regarding what constitutes the other two types of "sensitive" or "confidential" information, and there is a distinct lack of Agency consensus regarding the degree of vulnerability and inherent risk associated with some of EPA's information systems.

<sup>8</sup>OIG Audit Report, CSC, March 31, 1992, page 16.

<sup>9</sup>GAO RCED-89-57, Superfund Contracts: EPA Procedures for Preventing Conflicts of Interest Need Strengthening (February 1989).

<sup>10</sup>GAO/RCED-92-45: Superfund: EPA Has Not Corrected Long-Standing Contract Management Problems.

that criticized EPA for failing to adequately address previously identified vulnerabilities, including COI issues.

## **E. LOSS OF IN-HOUSE EXPERTISE**

There is a public perception, validated among some EPA managers, that the Agency is losing the technical expertise to review and evaluate the performance of Agency contractors.<sup>11</sup> In general, EPA's heavy reliance on contractors increases the risk of erosion of the Agency's technical capabilities; transfer of the institutional memory from the Agency to the contractors; and, ultimately, loss of public confidence (See Appendix I: Problem Assessments). Procurement and Contracts Management Division (PCMD) managers particularly expressed concern over the loss of contracting specialists, often to other federal agencies. Each group believed that the possibility of replacing these talents did exist but would result in reduced efficiency while new personnel are learning the EPA culture.

The Agency may be particularly vulnerable to loss and lack of expertise in the area of database support. OIG reports<sup>12</sup> indicate that sufficient ADP expertise is not available to ensure proper monitoring and control of contractor activities. Agency turnover and failure to recruit sophisticated skills in emerging ADP technologies can erode the effect of the necessary "arm's length" relationship. Personal service arrangements are also more likely to occur if the Agency lacks in-house expertise to oversee contractor performance properly. The susceptibility to loss of in-house expertise and thus control in the data processing area is particularly troubling given the greater potential for COI and access to sensitive information, the very large contract dollars at

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<sup>11</sup>Headquarters focus groups.

<sup>12</sup>Contract Management: EPA Needs to Strengthen the Acquisition Process for ADP Support Services Contracts, OIG Audit Report, March 1992; EPA's Management of Computer Sciences Corporation Contract Activities, OIG Audit Report, March 31, 1992.

risk, the history of incumbent advantage in key contracts in this area, and the open-ended nature of contracts written to provide long-term flexibility in an area of rapid technological change.

#### **F. EPA CONTROL OF CONTRACTOR PERFORMANCE**

At a recent congressional hearing,<sup>13</sup> the issue of whether EPA controls its contractors figured prominently in the testimony. Illustrative of the control issue are the allegations by EPA's Inspector General that CSC prepared some of its own delivery orders.

The concern is that EPA often does not assert adequate control over its contractors. As noted above,<sup>14</sup> OIG has found examples of contractors defining their own work specifications (scopes of work) and follow-on work. In essence, sometimes contractors may be telling EPA what it should buy.

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<sup>13</sup>Senate Committee on Government Affairs, Hon. John Glenn, Chairman, March 2, 1992.

<sup>14</sup>See §D above (Conflicts of Interest).

## **G. EPA CONTROL OF CONTRACTING COSTS**

### **1. Indirect Costs**

The greatest controversy regarding indirect costs has involved contractor "employee morale" costs.<sup>15</sup> Contractors have included as employee morale costs a variety of costs in bills submitted to EPA, including such items as Christmas parties, tickets to sporting events, Rolex watches and Tiffany clocks. In addition to questionable employee morale charges, other types of inappropriate indirect charges have been found.<sup>16</sup> The Agency has also been billed for indirect costs of questionable relevance and which give rise to a strong appearance of impropriety, such as the charges incurred by an EPA contractor to hire a law firm to write comments on proposed corporate sentencing guidelines.<sup>17</sup> Although the frequency of such abuses is unknown, the charging, review, audit and payment of indirect costs raise a number of issues about the adequacy of the contracts management process at EPA.

### **2. Direct Costs**

Numerous focus groups and interviews indicate that EPA's system for control of direct costs by reviewing contractor invoices may not provide the desired incentives or mechanisms for effective cost control or for preventing waste, fraud, and abuse. Since contractor invoices represent the contractor's claim for reimbursement of costs, proper

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<sup>15</sup>FAR §31.205-13.

<sup>16</sup>U.S. GAO, "Federally Sponsored Contracts; Unallowable and Questionable Indirect Costs Claimed by CH2M Hill." Testimony before the Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, House of Representatives, March 19, 1992.

<sup>17</sup>Hearing, April 9, 1992. Subcommittee on Environmental Energy and Natural Resources, Committee on Government Operations, House of Representatives, April 9, 1992.

and thorough review by the Agency is of importance for effective cost payment. The control of direct costs is dictated by the requirements in the Statement of Work (SOW) for Work Assignments (WAs) and Delivery Orders (DOs) of cost-reimbursable contracts. Poorly written SOWs lead to poor estimates of cost. When the Agency does not clearly define its needs and costs, it is not in a position to monitor accurately and control contractor charges.

### **3. Control Over Government Property**

EPA currently provides approximately \$113 million worth of government furnished property (GFP) to its contractors.<sup>18</sup> OIG identified in its audit of CSC,<sup>19</sup> several problems with respect to the management and control of such GFP. A fundamental problem in property management is also discussed in the December 1991 letter to the President on EPA's compliance with the Federal Managers' Financial Integrity Act. It identifies as a "material nonconformance," the need for reconciliation between the Personal Property Accountability System and the Integrated Financial Management System. This problem has been listed in the letter since 1983 and addresses all property, both contract and non-contract.

The Committee's staff examined these vulnerabilities and observed that potential problems also exist with respect to the failure of EPA project managers to prepare justifications for GFP; inherent difficulties in assembling an accurate inventory of all GFP under the control of contractors; and failure to record within each contract, GFP that is leased, purchased, or assigned.

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<sup>18</sup>Property Control System Report, dated May 6, 1992.

<sup>19</sup>OIG Audit Report, CSC, Chapter 5, page 113 et al.

### **III. UNDERLYING CAUSES**

#### **A. INTRODUCTION**

The Committee's staff finds that the problems set forth above are the result of systemic deficiencies in contracts management at EPA. Many of the deficiencies, in turn, manifest the cultural problem of status and attitude concerning cross-cutting functions in general and contracts management in particular. This section of the Report describes the underlying, interrelated causes of EPA's difficulties in contracts management. These causes can be divided into two categories: (1) management systems that pertain to management accountability, organizational structure, and the use of resources; and (2) processes that affect the actual implementation of contracts management. Although the Committee's staff does recommend some changes specific to individual improprieties, lasting reform is impossible if the Agency fails to address the underlying causes. The Committee staff's recommendations for correcting the Agency's contracts management problems are set forth in Section IV of the Report.

#### **B. EPA MANAGEMENT SYSTEMS**

##### **1. Lack of Management Accountability**

The Committee's staff found that problems in contracts management are symptoms of a greater management problem within the Agency. Because the Agency has addressed only the symptoms of the problems and not the underlying causes, past efforts have not resulted in permanent improvement in contracts management. A recurring theme voiced in our

interviews and focus groups was that the current tension between program outputs and quality contracts management raises questions about EPA's ability to balance both properly. The problems in contracts management reflect deeper and broader managerial issues. This imbalance significantly lessens the quality of management in general, and of contracts management in particular (see Appendix K, Case Studies).

The Agency is more focused on obtaining resources and projecting activity outputs for program accomplishments than on accountability for what was accomplished with the resources provided.<sup>1</sup> Efforts to link long-term and short-term planning, resource utilization, priority-setting outputs, and efficiency in the Agency have been insufficient to ensure quality contracts management. The Agency contract culture has encouraged spending funds, and power is often equated to dollars spent. No reward exists for saving dollars, only for ensuring that budgets are spent by the end of the year.<sup>2</sup>

Contracting offices are not required to provide services according to measurable standards of quality and efficiency. There is no top-down accountability for how contracts are used to achieve program outputs. Program office managers do not view themselves as accountable and are therefore not aware of the consequences of their performance in contracts management. In short, the perception is that program offices are charged with handling substantive issues, and PCMD (and OARM-RTP and OARM-Cincinnati) is responsible for the process or administrative issues.<sup>3</sup> Program managers may not always be held accountable for follow-up of

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<sup>1</sup>Interview with a former EPA senior manager.

<sup>2</sup>Interviews and focus group with Regions and Headquarters.

<sup>3</sup>Problem assessments -- Headquarters.



audit recommendations or Federal Managers' Financial Integrity Act (FMFIA) corrective actions, even though their performance agreements may contain standards for these activities (see Appendix K, Case Study 6). In fact, several interviewees confirmed the existence of low cultural regard for the contract function by expressing the view that EPA Headquarters was having a "knee-jerk" reaction to Congress, that the importance of good contracts management would fade, and that we will easily slip back into current practices.<sup>4</sup>

Managers at all levels tend to react to immediate problems and issues but often fail to follow through and fully implement solutions after Congress or senior management have refocused their attention on other issues. EPA managers often overlook the value of strong business controls when striving for program performance. Focus groups of COs and POs stated that program managers feel free to pressure contract managers within their own organizations and in PCMD to take the quickest approach, even if it means cutting corners (see Appendix I). Program managers do not have to make and sign the actual contract decisions and are therefore not accountable for them.

Many executives, managers and supervisors do not have any contracts management language in their performance agreements. They are not generally recognized or rewarded for their own or their organizations' overall accomplishments in contracts management; rather, they perceive awards as being given only for contracts management success in a specific program or on a specific contract. In addition EPA has not uniformly included in performance objectives critical job elements to encourage good contracts management.

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<sup>4</sup>Focus groups in Regions and Headquarters.

While the lack of accountability has its roots in the general cultural attitude toward contracts management, the current EPA management structure contributes to this problem. EPA has built a system in which PCMD is clearly responsible and accountable for good contracts placement; but everyone, and yet no one, is responsible for good contracts administration. Under the current structure (see Appendix D for Source Documents and Appendix F for current organizational structure), PCMD places contracts and has COs for administration who are delegated legal warrants; but program offices, who spend their funds through the contracts mechanism, have responsibility for contract administration on a day-to-day basis.

Although program offices have contracts management responsibilities, no single manager in a program office, field office, or laboratory has full responsibility for effective management of contracts in the organization. As previously noted, the interviews, focus groups, Hotline calls, and responses to the Suggestion Box (see Appendix H) indicated that the roles and responsibilities of COs, POs, WAMs, and DOPOs are not clearly understood. This confusion over who is responsible has diffused the accountability for quality contracts management.

EPA's organizational structures allow finger-pointing between the program offices and PCMD. The programs can say that the CO should have caught the problem; OARM can say that the program contract managers were not doing their jobs. Unclear guidance from a variety of sources worsens the problem.

Interviews and focus group participants repeatedly expressed concern and frustration with reporting relationships between the Regions, Research Triangle Park, Cincinnati, and Headquarters. In their opinion, these reporting relationships contribute to consistency and accountability

problems. The Committee staff's recommendations on reorganizing the contracts management structure attempt to remedy this.

In the current contracts management structure in EPA, COs are contracts professionals who are often overworked, geographically remote and inaccessible. They are delegated legal authority to make final decisions to authorize or withhold payments but often perform their duties far from the actual contract work being done, sometimes in a perfunctory manner. POs are often in an ambiguous role and carry out a mixture of administrative, financial and technical review tasks, but without the delegated authority to make final administrative decisions and sign official documents. WAMs and DOPOs are technical staff performing a mixture of administrative and technical tasks with no clear contracts role or authority. There is some question about the value added at each of these levels in the current structure.

PCMD requires that a WAM/PO/DOPO Designation Request Form accompany each work assignment submitted for processing. PCMD could not verify that each of 27,000 contract actions processed in 1991 was accompanied by one of these forms because they are collected by individual COs and are not on a centralized database. PCMD representatives did not know of a single instance in which the requested designation of a contract manager has ever been denied.<sup>5</sup>

EPA institutional processes designed to detect and correct management problems have not been effective.<sup>6</sup> One mechanism that is supposed to identify and correct management problems is the FMFIA process. However, EPA managers and staff do not fully understand the

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<sup>5</sup>Headquarters interview.

<sup>6</sup>CSC Audit.

requirements of FMFIA. They are not properly trained in implementing FMFIA, and thus do not use FMFIA tools to help monitor contracts management practices. During the Committee staff's review, many senior-level managers said that EPA should have reported overall contracts management as a material weakness in EPA's FY 1991 FMFIA Report. However, this was not done -- most likely because it is a cross-programmatic issue for which no single office is accountable. In November 1991, Assistant and Regional Administrators (or their representatives) agreed to describe the overall contracts management issue as an area of review during FY 1992. In addition, the Agency does not have an early-warning system that provides anonymity, encourages bottom-up reporting, and rewards its employees for raising issues of concern.

Although audits are no substitute for front-end quality, they constitute another mechanism can enforce accountability.<sup>7</sup> The Agency has an audit tracking system; however, existing mechanisms have not ensured that effective corrective action is taken to remedy problems identified in GAO or OIG audits. In fact, audit follow-up has been declared a FMFIA "material weakness." The Committee's staff is recommending organizational and other changes to ensure that effective and substantive audit follow-ups occur.

## **2. Management Infrastructure**

### **a. Organizational Placement of PCMD and the Office of the Comptroller**

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<sup>7</sup>In most instances, either EPA's OIG or the Defense Contract Audit Agency (DCAA) performs post-award audits of EPA contracts, depending on which is designated as the cognizant auditing agency. Significant audit backlogs in both of these agencies are external barriers to the quality of EPA's contracts management. The Committee staff makes no recommendation in this regard.

Billions of dollars each year flow through the Agency's business and financial organizations and systems that support EPA's mission. Yet these crucial business and resource management functions are submerged in the current structure and compete with many other functions. This fosters a climate in which the Agency's business and financial functions cannot command equal priority with technical program functions.

PCMD, the primary organization responsible for contracts management, is one of six divisions in the Office of Administration, which shares the attention of the Assistant Administrator for Administration and Resources Management with the Office of Human Resources Management (OHRM), the Office of Information Resources Management (OIRM), the Office of the Comptroller (OC), and the Offices of Administration and Resources Management at Research Triangle Park and Cincinnati (see Appendix F, Chart 1).

OC is responsible for most of the Agency's other key business functions. This office is responsible for the Agency-wide budget; resources management and financial management functions, including program analysis and planning; and budget formulation, preparation and execution. The Committee's staff is recommending significant organizational realignment to strengthen these key business functions for which PCMD and OC are now responsible.

#### **b. Placement of the Competition Advocate**

The Competition Advocate was appointed in December of 1984 pursuant to Section 20 of the Federal Procurement Policy Act as codified in the FAR Subpart 6.5. The duties and responsibilities of EPA's Competition Advocate include promoting full and open competition by the

Agency in the acquisition of supplies and services through review of Agency contract operations and identifying the actions necessary to achieve full and open competition. This information is annually reported to the Procurement Executive through a report of recommendations made by the Competition Advocate. The Competition Advocate's approval is required for all Justifications for Other than Full and Open Competition (JOFOCs) over \$100,000.<sup>8</sup>

Currently, the Agency's Procurement Executive is the Assistant Administrator for OARM. The Assistant Administrator redelegated all of his roles and responsibilities as the Procurement Executive through the Office of Administration to the Director of PCMD.<sup>9</sup>

Because the Competition Advocate's mandate is to assure that adequate competition in contracting occurs at EPA, he or she reviews PCMD's policies and procedures relating to this issue. The Competition Advocate should not report directly to the director of the office being reviewed. Specific line authority of the Director of PCMD over the Competition Advocate potentially compromises the needed independence of the Advocate and impairs his ability to implement necessary changes and ensure full and fair competition in EPA contracting. The Committee's staff recommends a change in the Competition Advocate's reporting relationship. (See Section IV B.2. below.)

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<sup>8</sup>The Director of PCMD must also approve JOFOCs in excess of \$1 million.

<sup>9</sup>Delegations Manual, General, Administrative and Miscellaneous, 1-2 Appointment of Designated Agency Procurement Executive, 1200 TN-135, 2/4/86.

### **3. Allocation of Resources**

#### **a. Use of Contractors vs. EPA Employees**

In the past two decades, EPA's mandate, including numerous statutorily imposed responsibilities, has expanded in direct response to the dramatic increase in awareness of and concern about environmental issues. At the same time, the Agency has come to rely increasingly on contractors to accomplish its mission. (See Appendix J.)

The number of EPA contracts management personnel has not kept pace with the dramatic increase in the number and dollar value of contracts.<sup>10</sup> More importantly, EPA has not undertaken a comprehensive and systematic analysis of what functions the Agency should and should not contract out. Nor has it carefully evaluated the appropriateness or resource implications of the use of various contract types for various functions. As a result, contracts have been awarded that carry a high degree of vulnerability to abuses such as: 1) the performance of personal services and IGFs, 2) improper access to sensitive information, 3) conflicts of interest, and 4) incurrence of improper and excessive costs (see Section II above).

Widespread sentiment within the Agency holds that EPA lacks sufficient FTEs to accomplish its mission and must rely on contractors to perform tasks that would be more properly assigned to EPA personnel.<sup>11</sup> Excessive reliance on contractors may be exacerbated by the perception that contract personnel can respond to rapidly changing assignments more

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<sup>10</sup>CSC Report; interviews with Headquarters and Regional offices.

<sup>11</sup>Interviews and focus groups with Headquarters and Regional offices.

quickly than civil service employees.<sup>12</sup> On-site contracting, particularly at EPA laboratories, has also been identified as a condition nurturing personal service relationships.

#### **b. Adequacy of Resources for Contracts Management**

The Agency mix of extramural and intramural resources has occurred with little or no analysis and conscious decision-making by upper level management. Contract decisions are often made at the staff level with little or no review. Senior management has not required program managers to provide them with an analysis, either proactively or reactively, of their decisions to contract out various functions.<sup>13</sup> In short, senior management has abdicated its decision-making authority to the staff levels.<sup>14</sup> For example, in the CSC context, indications are that both the decision on the required skills, education, and experience levels and the decisions on the approximately 165 waivers of those requirements were made without active senior management involvement. See Appendix K -- Case Study 5. Apparently, even though some of these decisions went through a paper review of different management levels, not a single senior manager questioned or changed them.

The Agency culture has historically given low priority to contracts management.<sup>15</sup> Although contractor support is crucial to achieving the

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<sup>12</sup>This perception is yet another indication of a need to improve management and accountability. One interviewee cited a cultural assumption at EPA that if we want to get something done, we go to the contractors. See also, Appendix K, case study 2.

<sup>13</sup>Interviews and focus groups with Headquarters, Regions, and laboratories.

<sup>14</sup>Interview with senior EPA manager.

<sup>15</sup>Interview with former EPA senior manager.



Agency's multi-faceted mission, managing these key resources is not seen as a critically important function. Contract placement is perceived as the most important aspect of the contracts management process. Historically, the limited resources allocated for contracting were first used to fill placement resource requirements, and the remainder was divided among the various oversight functions. The lack of glamour and visibility associated with contracting activities (compared to environmental programs) makes it harder to get contracts management the attention that it deserves from either Congress or the Administration in the annual budget process.<sup>16</sup>

Internally, OARM, which is responsible for analysis, preparation, and recommendation of the entire Agency budget (as well as various administrative support services, including contracting), has not aggressively sought additional resources for contracts management. OARM culture reportedly holds that OARM is above the fray and disdains "petty" resource squabbles.<sup>17</sup>

Ironically, many interviewees in EPA program offices argued for increased resources for contracts management. When a highly contract-leveraged program office was asked where it would place a hypothetical increase of 20 FTEs, the answer was, "Put them in the contracting offices."

Many WAMs and DOPOs cited a lack of time and FTEs to perform their job as they think it should be done. Additionally, COs and contracting specialists complain of insufficient resources, especially time to manage contracts and contract actions properly. The prevailing view is that the Agency fails to provide adequate resources to manage contracts in

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<sup>16</sup>Interviews with current and past EPA senior managers.

<sup>17</sup>Interview with EPA senior manager.

either the program offices or the contracting offices. One significant result of the lack of resources is a "victim mentality" that allows one to blame resources for contracts management problems and eschew personal responsibility.<sup>18</sup> The Committee's staff is recommending a number of institutional process changes to ensure that senior managers are aware of and involved in resource decisions.

**c. Lack of Workload Modeling**

While it does appear that contracts management suffers from a lack of resources and training (particularly in legal counsel and contract officer ranks), workload model data for contracts management does not exist in either contracting offices or program offices. As a result, no one knows with any degree of accuracy what resources are needed, since there is no linkage of these service costs to program outputs and no accountability on the part of those who provide or those who utilize the services. In effect, OARM develops a contracts management budget to support the programs without precisely knowing what other offices are doing, how many resources are needed, or how to determine if the resources are being properly allocated, used or misused. A further result is that program offices do not know what the costs of administration are, as those costs are borne by OARM, and when faced with legislated deadlines and hammers to achieve their programmatic outputs, the program offices may underestimate administrative needs (both in time and personnel) and thus do not have resources where they are needed.

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<sup>18</sup>Regional and Headquarters interviews and focus groups.

The Committee's staff therefore recommends comprehensive changes to the Agency's workforce planning systems to ensure that the Agency has the requisite information to support its resource requests.

#### **4. Poor Use of Human Resources**

The Committee's staff has found that the Agency generally does not conduct comprehensive workforce planning. This lack of planning has far-reaching effects. EPA does not use workforce planning to project skills needs and employee turnover, in order to plan for recruitment, to estimate training needs, or to anticipate contracting needs. In addition, EPA does not link strategic planning, budget planning and acquisition planning with workforce planning in general -- especially in the contracts management area.<sup>19</sup> In the absence of these basic management tools, assignment of contracts management responsibilities is often reactive: once funding is acquired, managers assign contracts management tasks as an afterthought.

EPA's employment appeal is dependent upon the commitment to public service of highly skilled and educated professionals. The Agency strives to hire the best scientists, engineers and other professionals that it can. These people accept positions in the Agency believing that they will be performing scientific, engineering or related functions for EPA and will be directly involved in the profession for which they have trained. In reality, however, once on the job, many of these technical people find that a major part of their responsibility is to manage a contract and contractor employees who will actually do the scientific or technical work.<sup>20</sup>

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<sup>19</sup>Interview with Former EPA senior manager.

<sup>20</sup>Interviews and focus groups with Headquarters and Regions.

In the past, EPA scientists performed more laboratory duties than they currently do.<sup>21</sup> Although the performance of these tasks has shifted largely to contractors, EPA has continued to hire individuals with only a scientific background to supervise the contractors and has provided very little training or guidance on how to manage contracts. Although technical and scientific knowledge is invaluable in monitoring and assessing the contractors' performance, the administrative and supervisory demands of these positions are often at odds with the professional desires of those hired to do the work. By denying this change in environment, EPA places highly qualified people in positions where they become frustrated by being unable to use fully their professional skills and training.<sup>22</sup>

Similarly, the Agency promotes and recruits technical, scientific and legal personnel into the managerial pool, generally without ascertaining whether these people are skilled in the managerial disciplines. The Agency then fails to provide adequate and timely training for these individuals to develop the necessary managerial skills. Contracts management is not generally recognized as a key managerial need or function in the EPA Senior Executive Service (SES), managerial and supervisory position descriptions, performance agreements, vacancy announcements, program descriptions and other documentation. Often we promote our technical superstars into supervisory and management positions to keep them from leaving the Agency. The irony of this is that the excellent bench scientist or the top-notch engineer or attorney gives up the work he or she prepared for academically and enjoys doing for a job that may be unfamiliar, unfulfilling, and frustrating. Conversely, EPA lacks a professional career

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<sup>21</sup>Interviews with field locations.

<sup>22</sup>Responses to the suggestion box and focus groups.

ladder or tracking system for employees interested in the contracting profession, and contract managers do not have the same grade equivalent as the scientists and engineers.

Many supervisors and managers appear to perceive duties like contracts management, program planning, human resources management, budget, and the other administrative responsibilities associated with management either as low priority or even as unwanted bureaucratic nuisances. This cultural attitude, which may be due in part to inadequate training in contracts management and other management skills, is communicated to the staff in many ways. Some EPA managers assign contracts management to subordinate staff who may have little interest, aptitude or training for the job. Since the overall EPA culture reinforces and perpetuates this jaundiced view of managerial functions, the manager can easily neglect or ignore these responsibilities.<sup>23</sup>

For similar reasons, contracts management is not adequately represented or acknowledged within EPA's recognition and rewards system.<sup>24</sup> Contracting accomplishments are underrated in terms of difficulty and viewed as less critical to the mission of the organization than scientific or technical program successes. In addition, many managers neither understand nor value contracts management work. Consequently, program managers often do not give sufficient attention to contracts management in the performance agreements of their staffs and do not evaluate performance in this area consistently or carefully. As a result, technical staff may come to view contracts management as a career

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<sup>23</sup>Headquarters and Regional focus groups and interviews.

<sup>24</sup>Id.

liability.<sup>25</sup> Significant cost savings or outstanding management of large, complex contracts activities is rarely recognized and rewarded in technical program organizations. EPA's managerial training and development programs, such as the Individual Development Plan process, formal management assessment programs, and the SES Candidate program activities, do not sufficiently emphasize contracts management, given the magnitude of contracting within the Agency.

## **5. Inadequate Involvement of Legal Counsel**

The Agency's legal advice for contract matters is provided by the Office of General Counsel (OGC), Contracts Law Branch. The Contracts Law Branch consists of seven contract attorneys. Three of these attorneys are located in Headquarters, two in Research Triangle Park (RTP), North Carolina and two in Cincinnati, Ohio. Only the three Headquarters attorneys provide contract law advice on a full-time basis. The contract attorneys provide legal support mainly to the COs located in these offices.<sup>26</sup>

The many contracts entered into by the Agency are important legal documents that set forth the legal rights and responsibilities of the Agency and the contractors. The award, management and close-out of these contracts require frequent decision-making by the COs. Since these decisions often have considerable legal implications for the Agency, timely and comprehensive legal input into these decisions is crucial to proper

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<sup>25</sup>Id.

<sup>26</sup>Headquarters has 33 COs, RTP has 10 COs, Cincinnati has 14, and the Regions have approximately 42. The laboratories do not have COs.

contracts management. However, legal input into the Agency's contracts management needs to be strengthened.

In general, the following problems are caused by a shortage of contract attorneys, lack of team spirit<sup>27</sup> between OGC and PCMD, and lack of a formal OGC concurrence role in most contract actions.

Contracting staff in the Regional offices and field laboratories cannot always obtain timely legal advice from OGC regarding post-award contract issues.<sup>28</sup> Although contracting staff in Headquarters, RTP and Cincinnati are generally satisfied with their access to legal advice because contract attorneys are located there, contracting staff in the Regional offices and laboratories are often dissatisfied. Contracting staff in these offices report that the physical/geographic separation from OGC (lack of face to face contact, differing time zones and slow mail) contribute to their inability to obtain legal advice.

Contracting staff do not always seek legal advice from OGC, even when such advice would be in the best interests of the Agency.<sup>29</sup> Some contracting staff want to avoid the delay, criticism and loss of control that they associate with legal consultation. Some contracting staff do not seek legal advice unless specifically required by the Acquisition Handbook. Indeed, OGC is usually not invited to important PCMD meetings.<sup>30</sup>

OGC sometimes takes a passive counseling role in post-award CO decision-making, even where legal assistance is specifically requested.<sup>31</sup>

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<sup>27</sup>Headquarters and Regional interviews.

<sup>28</sup>Regional interviews; Laboratory interviews.

<sup>29</sup>Regional interviews; Headquarters interviews.

<sup>30</sup>Headquarters interview.

<sup>31</sup>OGC Problem Assessment; Headquarters interviews; Regional interviews.

Some OGC personnel do not believe that OGC has the resources to provide legal assistance on routine contracts management questions.<sup>32</sup> OGC advice is often restrained because contract attorneys do not want to make the COs' decisions for them.<sup>33</sup>

Contracting officers do not always draft contracts that adequately serve the needs of the Agency, and contract attorneys do not always adequately review these contracts before their award.<sup>34</sup> The COs do not usually consult with OGC early in the contract drafting process.<sup>35</sup> In addition, the COs draft the contracts by extracting standard FAR, EPAAR and other contract clauses from the Automated Procurement Documentation System. This automated process may encourage the CO and contract attorney to relax their drafting and review efforts.<sup>36</sup>

OGC does not always appear at meetings between the Agency and its contractors, even though counsel for the contractor is present.<sup>37</sup> According to the general EPA custom, in order to protect the Agency's legal interests, an Agency attorney generally attends meetings where outside counsel is present. In some instances, however, the contracting

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<sup>32</sup>Regional interview.

<sup>33</sup>Headquarters interview.

<sup>34</sup>Headquarters interviews; Regional interviews.

<sup>35</sup>Contracting officers sometimes consult with OGC early in the contracting process if the type of contract is non-routine, or where new contract language will be crafted. However, since most Agency contracts are of the routine cost-reimbursement type, contracting officers do not often seek early OGC input.

<sup>36</sup>Headquarters interview.

<sup>37</sup>Regional interviews; Headquarters interviews.



staff have not invited OGC to meetings at which the contractor's attorney is present, and in other instances, OGC has chosen not to attend.<sup>38</sup>

PCMD has executed contracts without adequately addressing legal concerns raised by OGC.<sup>39</sup> The EPA Acquisition Handbook provides that contract attorneys merely "review" contract actions over \$500,000,<sup>40</sup> rather than "concur" with or "approve" of such actions. Thus, the Contracting Officer may ultimately disregard the legal comments. The only area in the contracting process where OGC appears to have a formal concurrence role concerns bid protests.<sup>41</sup>

## **C. CONTRACT PROCESSES**

### **1. Lack of Clear Guidance**

The Committee staff's interviews with key Agency managers and our focus groups across the Agency indicated that there is no singular authoritative source of policy and guidance on basic and topical matters concerning contracts management. Existing guidance is not consistent, timely, or readily accessible, and does not reach the working level staff in a timely way.

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<sup>38</sup>Some COs choose not to invite OGC since they believe that opposing counsel may hinder the productivity of the meeting.

<sup>39</sup>Appendix K (Case Study 3); TOSS contract; TSS contract; Headquarters Interviews; CSC Audit.

<sup>40</sup>Acquisition Handbook, Unit 5; Headquarters interviews.

<sup>41</sup>In contrast, for example, the General Services Administration Acquisition Regulation System provides for legal written approval for legal sufficiency of many contract actions. See Part 501.670-4.

Contract managers complained about conflicting interpretations of policy offered by different COs and admitted to "shopping around" among COs to solicit an opinion best suited to their needs. Contract managers are not always certain whether the guidance they receive represents 1) a CO's personal opinion, 2) a policy interpretation, or 3) official Agency policy not subject to broad interpretation.<sup>42</sup>

Many contract managers are not aware of the existence of the Contracts Management Manual, which is intended to be the major reference guide for contracts management, and those who are aware of its existence complain that the basic Manual and its updates are not readily available, even when specifically requested. The problems identified in the CSC audit clearly indicate that contract managers are either unaware of or ignore existing guidance.

The concern is widespread that guidance documents are overly theoretical in nature, lack relevance to EPA or program-specific issues, and do not provide practical advice on everyday contract issues that are most needed by the Agency's contract managers. For example, no guidance exists on how to manage resources successfully in a level-of-effort contract, which is the contract vehicle EPA uses for a high percentage of its contract dollars.<sup>43</sup>

Making changes to the Agency's three primary documentary sources of policy on contracts -- the Contracts Management Manual, the Acquisition Handbook and particularly the EPAAR -- can be very time consuming. Certain changes to individual or broad classes of contracts

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<sup>42</sup>Focus groups and interviews.

<sup>43</sup>Headquarters focus groups and interviews.

require EPAAR modifications, but such changes are often needed prior to the requisite amendment. Therefore, COs routinely request and are granted both individual and class deviations from EPAAR requirements.<sup>44</sup> These deviations are often used in lieu of EPAAR amendments. The number of class EPAAR deviations indicate the extent to which the EPAAR's requirements apparently fail to meet today's contracting needs. Unit 23 of the Acquisition Handbook contains more than 22 existing class deviations, suggesting that the EPAAR falls far short of meeting these needs.<sup>45</sup>

These three basic documents are supplemented on an ad hoc basis by program offices to address program-specific issues or areas considered to be inadequately covered or completely overlooked in the basic documents themselves. Occasionally program offices and PCMD's Procurement Policy Staff (PPS) coordinate the development of such program-specific guidance, but often guidance is developed and issued without PPS review.

Finally, although guidance documents are routed through formal distribution channels that include such highly placed officials as AAs, RAs, and SPOs, these documents are not always passed down through the chain of command and do not always fall into the hands of those who most need them, i.e., POs, WAMs, and DOPOs. The result is a significant risk of contracts mismanagement by front-line contract managers who are either ill-informed or misinformed.

In the opinion of many contract managers, PCMD has not provided timely or adequate guidance and has failed to coordinate or cooperate with

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<sup>44</sup>Focus groups in Headquarters offices; interviews and focus groups in Regions.

<sup>45</sup>Headquarters interview.

its program customers in developing needed guidance.<sup>46</sup> Consequently, many different offices have developed guidance to fill that void. With no single office being held accountable, inconsistent and conflicting guidance has been inevitable.

In addition, the Agency has been too conservative in identifying guidance of such significant and widespread impact that it deserves EPAAR coverage. The result is delays in issuance of new guidance, continued existence of obsolete guidance, and a general tendency for proposed guidance that is tough on contractors to be watered down as a result of industry comment.<sup>47</sup> The Committee staff's organizational recommendations address the issue of a strong national contracts management policy function.

## **2. Management Difficulties With Cost-Reimbursement Contracts**

A number of different types of contracts, each with particular advantages and disadvantages, are available to the Agency.<sup>48</sup> While the key to proper contracting is adequately and accurately specifying the product, certain types of contracts are more appropriate in some situations than in others. EPA has not used sufficient planning in its choices of contract vehicles.

EPA has consistently favored large cost-reimbursement, term contracts with fixed fees or award fees rather than fixed price or

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<sup>46</sup>Headquarters and Regional focus groups and interviews.

<sup>47</sup>Headquarters interviews and focus groups.

<sup>48</sup>FAR Part 16.

completion contracts.<sup>49</sup> Although these cost-reimbursement term contracts have afforded the Agency maximum flexibility in servicing program needs, they place the risk of contractor performance on the Agency. Under these contracts, no adequate incentive is created for contractors to minimize costs.

As presently administered, cost-reimbursement contracts require an inordinate amount of time and resources for proper management administration and lack effective cost control incentives. In order to manage cost-reimbursement contracts and independently assess the appropriateness of particular costs incurred, the Agency has had to create and pay for an expensive and extensive management and supervisory infrastructure. The expense of cost contracts is twofold. First, the necessary oversight mechanism represents an additional expense for the Agency, without which an incentive to maximize reimbursable costs would exist. This expense is borne by PCMD, rather than the program office that benefits from the flexibility of cost-reimbursement contracts. Second, since cost-reimbursement contracts require only "best efforts" and not the completion of specific tasks for a specific amount of money, they place almost the entire risk of completion of these tasks on the Agency. Absent unusual circumstances, the government must pay the cost for re-performance.

Despite the obvious contracts management and cost-effectiveness drawbacks, the Agency's preference for cost-reimbursement contracts still prevails. There are several reasons for the Agency's heavy dependence on

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<sup>49</sup>Letter from Christian Holmes to Frank Hodsoll, Executive Associate Director, OMB; GAO/T-RECD-89-8 "Sound Contract Management Needed at EPA," February 23, 1989; Statement of Richard L. Hembra, Associate Director, GAO/RCED-85-12, "The EPA Should Better Manage Its Use of Contractors," January 4, 1985; GAO/CED-82-36 "EPA Use of Management Support Services," March 9, 1982.

cost-reimbursement contracts. First, the complexity and diversity of the Agency's mission have fostered an Agency belief that it needs the most flexible contract vehicle available. Second, PCMD has encouraged the use of large cost-reimbursement contracts because the resources necessary to award and manage a single large contract are less than those required to manage several contracts.<sup>50</sup> Third, the Agency's overall budget from Congress is heavily weighted in extramural dollars. FTEs have not been sufficient to singlehandedly accomplish the Agency's mission without utilizing contractors.

The FAR tends to discourage the use of cost-reimbursement contracts and encourages the use of fixed-price contracts, because fixed-price contracts utilize the basic profit motive of private enterprise and thus require less management by the procuring agency.<sup>51</sup> Five specific management problems have plagued cost-reimbursable term contracts at EPA, illustrating the reason for the predisposition against cost-reimbursement contracts.

First, cost-reimbursement contracts are susceptible to poorly structured individual work assignments (WAs) and delivery orders (DOs) which fail to elicit optimal contractor performance and require an excessive degree of continuing EPA direction. If a WAM or DOPO drafts an unclear or incomplete WA or DO, proper contractor performance is difficult to measure or enforce. Imprecise and overly broad SOWs

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<sup>50</sup>Headquarters interviews and focus groups.

<sup>51</sup>FAR §16.103(b). According to FAR §16.301-2, cost-reimbursement contracts are suitable for use only when uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use a fixed price contract. Thus, while the particular contract type chosen by the CO is generally a matter of negotiation and the exercise of sound judgment, COs should avoid the protracted use of cost-reimbursement contracts. FAR §16.103(a).

contribute to the need for excessive supervision and direction of contractors. Time pressures, lack of technical knowledge, a desire to have as broad a SOW as possible to avoid transaction costs and delays, or an unclear notion of what is wanted can all result in deficient SOWs. In some cases, perhaps because of lack of in-house expertise, Agency staff cede to the contractor their responsibility to prepare work assignments -- an inherently governmental function.

Second, the prohibition against the performance of personal services may be violated under cost-reimbursement contracts when work specifications are insufficient or unclear. Informal instruction of contractors, which could result in the performance of personal services, is common when the written work assignment is inadequate.

Third, Agency management has not documented or acknowledged the time and resources needed to manage cost-reimbursement contracts properly and thus has not factored adequate time into staff workload requirements. Because management places a higher priority on technical work to be performed by program staff than on their contracts management activities, staff are not motivated to spend time managing contracts.<sup>52</sup>

Fourth, cost-plus-award-fee contracts are traditionally used to encourage better contractor performance. However, the award fee system places time-consuming administrative burden on those managing the award fee. In particular, PO burdens of collating WAM contractor review forms and convening the Performance Evaluation Board (PEB) for review of

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<sup>52</sup>Regional focus groups.

information is burdensome, untimely and often poorly executed.<sup>53</sup> As a result, awards may not accurately reflect contractor performance and do not provide timely feed-back.

Finally, the sheer size of large national cost-reimbursement contracts makes management and control of contractors a serious problem.

### **3. Inadequate Training**

Many of the problems identified with contracts management at EPA are the result of lack of experience, knowledge and training.<sup>54</sup> Quality training is essential to quality contracts management. Interviewees have repeatedly informed the Committee's staff of problems caused by inexperienced or poorly trained contracts personnel. Many contract managers are neither trained in the fundamentals of government contracting nor equipped with the skills they need to assume fiduciary responsibilities over public funds. This represents a significant financial risk for the Agency and partially explains why a number of contracting problems have developed. In addition, until recently, Agency managers were not required to take contract training unless they have personal responsibility for managing a contract. The result was that often mid- and

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<sup>53</sup>GAO/RCED 92-45 "EPA Has Not Corrected Long-Standing Contract Management Problems," October 1991; GAO/RCED-88-182 "Superfund Contracts -- EPA Needs to Control Contractor Costs," July 1988; GAO/T-RCED-89-8 "Sound Contract Management Needed at EPA," Statement of Richard L. Hembra, Associate Director, GAO, February 1989; Regional interview and focus group.

<sup>54</sup>Superfund Contracts: EPA Needs to Control Contractor Costs, GAO RCED 88-182, July 1988; Superfund: EPA Has Not Corrected Long-Standing Contract Management Problems, GAO RCED 92-45, October 1991. For example, problems can arise when EPA personnel do not understand the rules and are not aware of the situations that give rise to conflicts of interest. COI has not been emphasized sufficiently in EPA's training course on contract administration.



senior-level managers did not understand the rules their subordinates must follow or the limitations on their contracts management authority.<sup>55</sup>

The interviewees were generally dissatisfied with the quality of the training.<sup>56</sup> The content of the Contract Administration course does not fully equip EPA staff with the tools they need to assume their responsibilities as contract managers. Many of the courses for contract specialists and technical personnel are provided by contractors, who lack relevant EPA day-to-day contracting experience. The course and instructors do not emphasize the practical aspects of day-to-day contracts management and the course material is overly theoretical. Contractor instructors might also fail to emphasize all available sanctions that can be imposed on contractors. Courses are not adequately updated to reflect changing requirements. The Agency pays insufficient attention to modifying courses based on customer concerns and course evaluations. Some technical staff feel that they are pressured to get the job done even if this involves cutting corners with contracts. The belief is widespread among WAMs and DOPOs that managers are not only unwilling to support them if their adherence to proper contracting procedures results in delayed work products but that they may, in fact, be penalized for not stretching the rules or violating them.<sup>57</sup> These problems may result from managers' insensitivity to contracts issues, which in turn may be caused by insufficient training.

The Committee's staff is recommending a number of changes to the Agency's training process to ensure quality contracts management.

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<sup>55</sup>Headquarters and Regional focus groups.

<sup>56</sup>Headquarters and Regional interviews and focus groups.

<sup>57</sup>Headquarters and Regional focus groups and interviews.

#### **4. Poor Cost Estimation**

EPA develops SOWs that require specific contractor performance. Independent government cost estimates (IGEs) must be made in advance of the issuance of work assignments to provide a reasonable basis for authorizing the work.<sup>58</sup> The Agency has difficulty in preparing IGEs, due to the absence of good supportive data and guidance, including pricing techniques and current market costs, and the lack of qualified personnel.<sup>59</sup> Thus, until recently when IGEs have begun to be systematically developed in the Superfund program, EPA has relied on contractors to prepare cost estimates. Contractors obviously have an incentive to inflate such estimates, or at best, err on the high side.

Cost negotiations are critical at a WA or DO level. EPA's negotiations often appear to be arithmetic calculations rather than detailed justifications of specific costs by activity. Reliance on the expertise and goodwill of the contractor for cost estimation creates the possibility that the task will cost more than it should. Contractors are tempted to spend every penny available for a project, and often do so, since WAMs have a limited conception of the appropriate cost of the job. An inexperienced WAM can easily accept whatever cost estimates are offered by the contractor.

Little EPA guidance exists on cost-estimation. The Agency has not allocated adequate program resources to support development of IGEs. The Agency is beginning to build databases containing costs of various

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<sup>58</sup>FAR §15.803(b).

<sup>59</sup>EPA's failure to develop independent cost estimates has long concerned GAO. (EPA Needs to Control Contractor Costs, July 1988; Superfund: EPA Has Not Corrected Long-Standing Contract Management Problems, October 1991).

property and services procured by the government to assist in the development of IGEs.<sup>60</sup> The Committee's staff recommends additional guidance, databases, and training to attain quality IGEs leading to better control of contractor costs.

## **5. Inadequate Monitoring of Contract Cost and Performance**

### **a. Poor Review of Invoices**

The level of financial risk to the government and thus the level of financial monitoring necessary, varies with the type of contract. Under cost-reimbursement contracts the contractor is reimbursed for any costs that are reasonable, allowable, and allocable; therefore, there is little incentive for the contractor to emphasize control of costs. As noted in the Contract Administration course book:

A time-and-materials, labor-hour, or fixed-rate indefinite-quantity for services contract is of even more concern, and the contractor has a direct incentive not to control costs or perform efficiently, because every additional hour of labor charged will result in additional profit.

Under cost-reimbursement type contracts, the contractor is required to submit monthly reports on both technical progress and financial status. Prior to payment of invoices submitted by the contractor, the PO for the contract must review the invoices and certify that the claimed costs are payable and that the government is receiving value commensurate with the costs incurred. A thorough review of the invoices requires a level of

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<sup>60</sup>For example, in the Superfund Program a database is being build through an interagency effort involving EPA, the Department of Defense (DOD), and the Army Corps of Engineers.

familiarity with the activities occurring on each contract that a PO often does not have.<sup>61</sup> The PO may seek input from WAMs or DOPOs, who are usually more knowledgeable about the specific activities expected of, and performed by, the contractor during the performance period of the invoice. When such input is solicited, WAMs and DOPOs may review the performance and financial information for their individual WAs or DOs and report any deficiencies or questionable items to the PO.<sup>62</sup> This review should typically include an examination of labor hours, mix of labor categories, equipment costs, travel, reproduction costs, charges by subcontractors and consultants, and any other direct costs that may have been incurred during the performance period covered by the invoice. Sometimes, however, the POs conduct their reviews without such input.<sup>63</sup>

POs are required by the National Contracts Payment Division to approve invoices within 15 days of submission. Consequently, the invoices often receive only a cursory review by either the PO or the WAM/DOPO with no effective evaluation of the propriety of the claimed costs.<sup>64</sup>

The CO for the contract has the responsibility to review other contract costs, such as overhead rates, rates for general and administrative expenses (G&A), and other indirect costs. These rates change infrequently and are spot-checked randomly by the CO.<sup>65</sup>

The Agency has not issued consistent directives on invoice review that adequately specify procedures, roles and responsibilities. Invoices do

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<sup>61</sup>Headquarters, Regional, and laboratory focus groups.

<sup>62</sup>EPA, Contract Administration coursebook (November, 1991).

<sup>63</sup>Headquarters and Regional focus groups.

<sup>64</sup>Regional focus groups, Headquarters interviews, and EPA senior manager.

<sup>65</sup>EPA, Contracts Management Manual, Project Officer's Handbook.

not contain sufficient details to allow for adequate reviews. The system imposes short time restrictions that encourage cursory reviews and certifications.<sup>66</sup>

**b. Inadequate Monitoring of Performance**

Many project managers reportedly do not adequately review contractor progress reports. They do not adequately review the technical or cost information they contain, and thereby lose an early opportunity to detect and correct problems.

Insufficient time is spent on contractor oversight, particularly in field operations. Focus group participants frequently noted that they could not spend enough time monitoring contractor performance. This problem also surfaced during an OIG audit of field operations at Superfund sites.<sup>67</sup>

The OIG has found that in some contracts deliverables are not reviewed sufficiently, and thus feedback to the contractor is inadequate.<sup>68</sup>

The award fee provision under many cost-reimbursement contracts is one means of commenting on contractors' performance, but the system is not effective unless the feedback is timely. The award fee process often has proven to be slow and cumbersome and not highly effective as a method of controlling contractor performance.<sup>69</sup>

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<sup>66</sup>GAO interview.

<sup>67</sup>OIG Audit Report, "Review of Region 2's Oversight of Superfund Post-Settlement Activities," March 29, 1990.

<sup>68</sup>OIG Audit Report, "Review of Region 2's Oversight of Superfund Post-Settlement Activities," March 29, 1990.

<sup>69</sup>Focus group results.

There are no separate recommendations in Section IV captioned, "Inadequate Monitoring of Performance." The recommendations for improved training, guidance, rewards and recognition, and contract language improvements are intended to result in improved monitoring of contractor performance.

**c. Inadequate Monitoring of Government-Furnished Property**

OIG's recommendations in its CSC audit address issues involving government-furnished property (GFP) procedures. The scope of the audit, however, addresses concerns about GFP used in field projects or after projects are concluded. The Committee's staff believes there are potential vulnerabilities in these two areas. We learned, for example, that certain GFP can be inventoried as a single system (like a water treatment system at a Superfund site). When the system is dismantled, however, the component parts may not always be accounted for in the inventory.<sup>70</sup> Property control receives low priority, particularly in the field, where the necessary paperwork may be neglected until years later when the contract is closed out. The extent of this and other problems is difficult to quantify, since EPA contract property personnel are not located in the Regions or at field sites. The Committee's staff is recommending improvements in training and guidance, as well as the formation of a Quality Action Team (QAT) to evaluate property management and recommend additional process improvements.

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<sup>70</sup>Headquarters interview.

## **6. Problems With Indirect Costs**

The greatest controversy regarding indirect costs has arisen in the context of "employee morale" costs. EPA has been criticized for paying a variety of claimed costs, including such widely discussed items as Christmas parties, tickets to professional sporting events, Rolex watches and Tiffany clocks. While employee morale costs represent a tiny fraction of contract expenditures, the public reaction to such costs can seriously compromise the Agency's credibility. However, the FAR provides that costs incurred for activities designed to improve working conditions, employer-employee

relations, employee morale, and employee performance are allowable if these costs are reasonable.<sup>71</sup>

One of the issues which has been raised in the Congressional hearings is whether the test of what is reasonable should be tailored to reflect the standards in private industry, or rather, the norm in the government. In all but the most unlikely circumstances, it is not proper for the government to provide its employees the sorts of benefits noted above.<sup>72</sup> The Committee's staff suggests that, since contractors are being used to perform work for the government, the standard used to identify

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<sup>71</sup>FAR §31.205-13. Under FAR §31.201-2, the factors to be considered in determining whether a cost is allowable include the following:

- (1) Reasonability.
- (2) Allocability.
- (3) Standards promulgated by the Cost Accounting Standards Board, if applicable; otherwise, generally accepted accounting principles and practices appropriate to the particular circumstances.
- (4) Terms of the contract.

Pursuant to FAR §31.201-3(a), a cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. The FAR emphasizes that "no presumption of reasonableness shall be attached to the incurrence of costs by a contractor." In fact, if the CO or COTR questions the cost, the burden of proof is on the contractor to establish that the cost is reasonable.

The FAR §31.201-39(b) goes on to state that what is reasonable depends on a variety of considerations and circumstances, including:

- (1) Whether it is the type of cost generally recognized as ordinary and necessary for the conduct of the contractor's business or the contract performance;
- (2) Generally accepted sound business practices, arm's length bargaining, and Federal and State laws and regulations;
- (3) The contractor's responsibilities to the Government... other customers.... and the public at large....

<sup>72</sup>Hearing, Subcommittee on Environmental, Energy and Natural Resources, Committee on Government Operations, April 9, 1992.



reasonable costs should mirror more closely the standard used for government employees.

GAO has found that a contractor's inaccurate recordkeeping hid other unallowable costs . For example, costs were sometimes claimed as allowable because they had been placed in the wrong account, rather than in an account that labeled them as clearly unallowable. In addition, costs were passed along even though justification submitted by employees was incomplete or nonexistent.<sup>73</sup>

## **7. Suspension and Debarment**

One of the more effective means available to the Agency to ensure contractor integrity is suspension and debarment (S&D). The federal government's S&D policy is to protect the public interest by awarding contracts only to "responsible" contractors.<sup>74</sup> Businesses and individuals who are suspended or debarred are excluded from entering into new contracts from any federal department or agency, thereby depriving them of the single largest customer in the American economy.

The Compliance Branch of OARM's Grants Administration Division is responsible for accomplishing the Agency's S&D program. Four

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<sup>73</sup>According to GAO, in response to EPA's and GAO's audit work, CH<sub>2</sub>M Hill has begun to change its accounting controls and is putting more complete reviews in place. See GAO, Testimony Before the Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, House of Representatives, "Federally Sponsored Contracts; Unallowable and Questionable Indirect Costs Claimed by CH<sub>2</sub>M Hill," March 19, 1992.

<sup>74</sup> The permissible grounds for S&D are broad, and thereby allow S&D to be used to address almost all forms of misconduct by a contractor. Among the enumerated causes for S&D are the commission of any offense indicating a lack of business integrity and "any other cause of so serious or compelling a nature that it affects the present responsibility of a person." 40 C.F.R. §§ 32.305, 32.405.

attorneys and one investigator are assigned to the Branch. EPA's S&D program is recognized as vigorous both within and outside the Agency. In FY 1991, the Branch undertook suspension actions against 120 business entities, debarred 79 firms, and reached agreements through which 39 others took remedial measures to restore themselves as "responsible persons."<sup>75</sup>

While S&D is a proven effective technique for addressing contractor fraud and abuse, the commitment of human resources to the program and its low profile in the OARM organizational hierarchy are not commensurate with this fact. In addition, some program offices are reluctant to initiate S&D, in part because of their unfamiliarity with S&D requirements and procedures. This, coupled with their dependence on contractors contributes to a hesitancy to jeopardize the contract, even if it is in the Agency's long-term interest.

The small number of attorneys in the Compliance Branch requires that S&D be reserved for the most egregious of wrongdoing by EPA contractors. The Compliance Branch needs the resources to address poor contractor performance that rises to the level of serious intentional deviations from contract requirements or a pattern of grossly negligent performance. Merely terminating a contract with a contractor in such circumstances allows the contractor the opportunity to enter into Agency contracts and potentially cause a repetition of such problems, or to contract with other federal agencies or departments and have them experience similar serious contract performance problems as encountered by the EPA. The only certain prevention of this recurrence is through suspension or debarment of a contractor.

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<sup>75</sup>Headquarters interview. These numbers include not only Agency contractors but also firms that were the subject of criminal and civil environmental enforcement actions.

The assignment of the S & D program, which deals principally with the responsibility of government contractors rather than with that of grant recipients, to a branch office in the Grants Administration Division, with the title of Compliance Branch, unnecessarily disguises and minimizes the role of the S&D program.

#### **8. Lack of Communication/Coordination**

The Committee's staff found almost universal agreement and substantial evidence that the Agency's national contracts management program is seriously lacking in effective and coordinated communications. This is a clear systemic weakness that derives from management inattention, failure to recognize a continuing problem, and failure to attempt even the most rudimentary improvements. Regional line staff -- POs, WAMs, DOPOs -- clearly felt isolated, lacking a voice to assist in formulating the basic policies and procedures that they must implement.

During interviews, staff noted the lack of information sharing across the organization as well as up the line. EPA does not adequately support the contracting structure, processes and personnel with management information systems. Poor communication, and the resulting lack of consistent information about contracts, contractors, subcontractors, and contracting guidance is a major weakness in the Agency. Currently, fragmented systems store data in a variety of formats and are not accessible to everyone, so baseline information is collected with difficulty and uncertain validity. These problems are exacerbated as contracting personnel, who want to do a job well, seek locally developed databases or

create their own to fill the current void in information management systems.<sup>76</sup>

There are few methods for sharing information among COs, POs, DOPOs and WAMs. Many DOPOs and WAMs operate in a vacuum isolated from others who are doing similar work. Resources for communication tools such as newsletters, meetings, and electronic bulletin boards have not been channeled to EPA contract managers, except for Superfund. As a result, COs, POs, DOPOs, and WAMs are not fully aware of the roles and responsibilities of others in the procurement cycle.

In addition, OGC and PCMD do not adequately coordinate with each other on important contracting matters such as policy decisions, contract purposes and types, negotiations, post-award contracts management issues, conflict of interest issues, contract close-outs and program enforcement issues.

Although geographic separation may have some bearing on the communication and separation problems, the Committee's staff concludes that the COs' workload, unclear responsibilities and competing priorities also play a significant role. Unreturned phone calls, lost documents, and conflicting goals and guidance are symptoms of management problems and staff confusion, not distance. Many said that COs cannot respond to the programs they serve due to a lack of understanding that comes only with presence and common experiences.

Poor communication also extends to upper and mid-level EPA management. Most Agency managers are unaware of past accomplishments or problems, results of management reviews, or ongoing improvements in contracts management. Most managers interviewed were

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<sup>76</sup>Focus groups and interviews Agency-wide.

not aware of the contents of EPA's FY 1991 FMFIA Report, their own offices' FMFIA Reports, government-wide GAO audits, OIG national audits, or OIG Region-specific audits. Currently, OARM and OPPE operate separate tracking systems for OIG and GAO audits. Consequently, the Agency is seriously falling behind in its ability to resolve audits and implement corrective actions in a timely manner.<sup>77</sup>

Recommendations to improve communications problems within the Agency are contained throughout Section IV of this Report.

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<sup>77</sup>March 1992 OIG Semi-Annual Report to Congress.



## **IV. RECOMMENDATIONS**

### **A. INTRODUCTION**

The Committee's staff recommendations to improve and correct EPA contracts management were developed with the goal of realizing the following vision of how EPA managers should function in the desired state:

EPA managers would possess the skills to perform strategic planning, to organize, to direct and motivate employees, to provide timely and appropriate training, recognition, empowerment and teamwork, to perform measurement and analysis, and to assure quality. EPA senior management would insist upon accountability and would replace ineffective and poor managers. Where organizational or programmatic changes occur, EPA management would use the opportunity to move skilled, effective managers into positions in the organization. Recognizing the need for an integrated approach, EPA management would allocate sufficient resources to manage its mission and emphasize that measuring success must include evaluation of all management practices, including the conscientious management of contracts. The managers recognize the cultural barriers to quality contracts management and, with diligent effort, would begin to remove them.

The Agency communicates the priority of contracts management through its formal and informal structures, systems, and processes. Business and management decisions and activities are an integral part of accomplishing EPA's mission and must involve the same rigor and professionalism exhibited in its scientific, technical and legal functions.

The Committee's staff recommends a broad range of changes that affect all levels of contracts management activity and involve all the key players in the contracts business in EPA. The recommendations fall into two major categories: systems and processes. They are intended to remedy the underlying causes described in Section III above, in order to avoid contracting improprieties such as those set forth in Section II.

The first category of recommendations would construct a national program for contracts management through a series of Agency-wide actions including management accountability, reorganization, reallocation of resources, improvement of human resources systems, and legal support for contracts management.

The second category of recommendations proposes a number of detailed steps to correct contract problems identified in the initial "Problems" Section of the Report and the underlying causes described in Section III C, "Contract Processes." These recommendations address guidance, training, communication and coordination within the contracts management community. Process recommendations also deal with improvements in estimating and monitoring contract costs, use of control mechanisms, including contractor sanctions, and control of government property.

We recognized that some organization units may not have sufficient resources to implement all of these recommendations. The Committee's staff recommends that resources be reprogrammed as necessary.



## **B. MANAGEMENT SYSTEMS**

### **1. MANAGEMENT ACCOUNTABILITY**

These recommendations address the authority, responsibility and accountability of managers, contracts professionals and technical program staff with contracts duties by defining the basic roles and responsibilities in the contracting system. The recommendations also address formal management controls, audits and audit follow-up. A fundamental principle of TQM is empowerment. Empowerment involves the placement of authority, resources, and responsibility at the lowest practicable level closest to where the involved function is performed. This Report seeks to apply that principle.

#### **a. Roles and Responsibilities**

The Committee's staff recommends a gradual restructuring of the roles and responsibilities of contract administration personnel. Business management functions now performed by POs and WAMs would be shifted into the position of Administrative Contracting Officer (ACO) or Contracting Specialist. Similarly, the technical functions now performed by POs would be performed by the WAMs. WAMs would be trained in the new responsibilities and are eligible to become Contract Officer's Technical Representatives (COTRs).<sup>1</sup> COTRs would be nominated by the program office and appointed by the ACO to perform all technical review and oversight of a contractor's performance. Only individuals who have

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<sup>1</sup>GSA's "A Guide for Contracting Officers' Technical Representatives," (May 1991) should be consulted and possibly furnished to all contracting personnel.

completed required training may be appointed as COTRS. This restructuring would reduce the levels of review and would narrow and focus accountability. The new organization is represented in Appendix F.

Placement Contracting Officers (PCOs) who award national contracts would report to the proposed OAAM (see subsection 2.a. and b. below) and would be located in Headquarters, RTP, and Cincinnati.

National contracts used by the Regions would be placed from OAAM and administered by the appropriate Headquarters Program office. The PCO would be located in Headquarters, RTP, or Cincinnati. After the restructuring is complete, the program offices would have designated ACOs to administer their contracts. These ACOs would report to the SPO in the program offices. Each Region using a national contract would designate a COTR to manage the technical functions required by the contract. The COTRs would report to their immediate supervisors.

Regional contracts, such as Superfund, facilities management, or health care units, would continue to be placed and administered by the Regions. This would require the realignment of some functions currently being performed by POs and WAMs so that they are performed by ACOs and COTRs. The PCO and ACO would report directly to the SPO in their Region. The PCO and ACO would be located in offices directed by the SPO and not in the Regions' program offices. The COTRs would report to their immediate supervisors, who may receive input from the SPO on the COTR's performance evaluation. In addition, in order to promote accountability, the SPO should have input into the performance evaluation of all managers in the COTR's chain of command. Of course, the National Program Manager will continue to have a role in planning and overseeing program contracts, even if they are delegated to the Regions.

To implement the restructuring of the roles and responsibilities of contract administration personnel, the Committee's staff recommends that all Regions and Offices submit an Implementation Plan (IP) to OAAM by November 1, 1992<sup>2</sup>. The IP will include:

- 1) an analysis of the impact on personnel;
- 2) an analysis of educational and other requirements for personnel;
- 3) proposed descriptions for employees whose present position descriptions will be affected by the restructuring;
- 4) additional resource requirements;
- 5) a complete listing of contracts currently in use by the Office/Region;
- 6) a certification that the Region or Office has the resources to manage the contracts it administers;
- 7) a schedule for developing and implementing contracts management plans for the contracts it administers; and
- 8) an action plan for implementation, with milestones attached.

Offices and Regions should prepare the IPs using workforce planning, as recommended throughout this Report. Also, the IPs should consider implementation of a career track for contracting professionals, training of managers, and hiring practices that match people, skills, and interests with tasks. OAAM and the Office of Human Resources Management (OHRM) should work together to develop performance objectives and job description elements that accurately describe contracts management functions for COTRs. These elements should be ready for Agency review by April, 1993.

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<sup>2</sup>There are approximately 99 COs, 164 Contracting Specialists, and 4,000 POs and WAMS/DOPOs currently at EPA.

The IPs should be submitted to OAAM and reviewed. OAAM and each Office or Region should reach agreement on their contents. Implementation of IPs should begin by February 15, 1993. Their completion date would depend upon the agreement made with OAAM.

Under this structure, offices using EPA's large mission contracts would be accountable and responsible for managing the contract using good business practices within the policies established by the OAAM Policy Division and applicable law. This makes EPA's program leadership accountable for its decisions.

As a further check and balance, the Chief Financial Officer (CFO) would issue all CO warrants and terminate or limit warrants if contract mismanagement occurs. In extreme cases of mismanagement, the CFO may decline to approve contract extensions, option years, or even undertake a re-procurement. Appropriate oversight and use of the CO warrant authority by the CFO would be an important part of good contracts management at EPA in the future.

#### **b. "Contracting Team" Concept**

Interviewees and focus group participants suggested the formation of quality contracting teams to accomplish the life cycle management of a contract from award to closeout. This system is used in other agencies and in private industry.<sup>3</sup>

As described above, all placement of national contracts would be accomplished in OAAM. A Quality Contracting Team would be created for each contract to include the PCO, the ACO, the COTRs, the Program

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<sup>3</sup>Interview with DOD officials.

Office Manager or Supervisor, legal counsel, and a cost analyst. The team would meet when appropriate during the procurement cycle and be available for consultation in their areas of specialization as the need arises.

It is important to convene the team upon the conceptualization of the contract and keep it active through the placement, use, closeout and audit of the contract. This way, all team members would be fully knowledgeable of the history and terms of the contract, and EPA's rights and obligations. The team concept also provides a system of checks and balances through the life of the contract among those who use it.

We recommend that the team prepare a contracts management plan, including a milestone chart, for the proposed contract. This plan would go beyond the acquisition plan to involve post award activities, including scheduled team meetings for each contract year, through contract closeout. Planning would include the methods for scheduling and tracking of WAs or DOs, financial monitoring, scheduling of award fee activities (where appropriate), schedules for exercise of options, etc. OAAM would not proceed with a procurement unless the contracts management plan demonstrates that adequate resources are available to implement it.

Before EPA can award a contract, we recommend that each team member must sign a certification form which states that: "To the best of my knowledge and belief, I certify that the award of this contract and the language of this contract comply with applicable federal law and written EPA policy, and is in the best interests of EPA." This certification form should be executed in addition to EPA Form 1900-19 and any other applicable EPA contract review forms.

We recommend the formation and institutionalization of support groups in the Regions, RTP, and Cincinnati under the new PCO, ACO, COTR structure. Membership would not be mandatory but would be

encouraged by supervisors and peers and provide a way to extend one's professional growth. Support groups provide a format for education and sharing ideas for improved systems and processes. OAAM would develop a communication plan and budget no later than the end of the FY94 budget development process, to support the team concept and support groups to enhance communication. The budget could include funding to produce a newsletter targeted at the contract profession at EPA, with articles explaining current policy, new policy, tips for making one's job simpler, recognition of colleagues who have demonstrated good contracts management, clarification of legal issues, and other items of interest.

OAAM should create opportunities for groups of PCOs, ACOs, and COTRS to assemble in quarterly or bi-annual meetings in Headquarters, RTP, Cincinnati, and the Regions, as is done with Superfund contracts management teams. Other outreach/assistance activities would include lectures, hands-on workshops, contract-specific guidance, and team-building exercises.

### **c. Role of the Senior Procurement Officer**

The Administrator recently required Assistant, Associate and Regional Administrators to designate a single SES-level manager to serve as Senior Procurement Officer (SPO) with full responsibility for the effectiveness and integrity of all procurement activities, including contract administration, in his/her office. Separate, on-site SPOs should be designated for each EPA laboratory or major EPA field site. This was the first step taken to improve the management accountability of contracts management.

Since then, a cadre of approximately 50 SPOs has been appointed. The Committee's staff recommends that the SPO retain complete responsibility for contracting management within his/her jurisdiction. The SPO should be a member of the Senior Executive Service (SES), and when at all possible, regularly maintain a position that encompasses cross-cutting managerial responsibilities within his/her organization. His/her accountability for contracting management should not be delegated. Appendix G provides a more detailed discussion of the duties and responsibilities of the SPO. There are a number of recommended actions in the Appendix pertaining to the SPO responsibilities.

The SPO would evaluate the performance of PCOs and ACOs within his/her span of control. Communication on policy and guidance would flow to the contracting staff through the SPO. The contracting staff would also rely on the SPO's support when program offices place pressure to perform outside the required processes to get the job done. Final authority for arbitrating situations when program goals and contracts management goals seem to be conflicting would reside with the SPO with support from the Assistant or Regional Administrator.

To ensure that the various program offices with contract responsibilities are correctly administering the contracts within their span of control, the SPO would provide input into the performance evaluation for the program managers. The SPO would provide an informal evaluation, either oral or written, during April for each mid-year performance evaluation period. By October 15 of each year, the SPO would provide a written evaluation of the contract administration in each program for the performance evaluation period.

No office head, division director, or Regional, Assistant or Associate Administrator may receive an outstanding performance evaluation, award

or promotion if there are serious deficiencies in the administration of contracts under their command.

#### **d. Management Integrity Controls**

The Federal Managers' Financial Integrity Act (FMFIA) provides a potentially useful mechanism for managers to identify their responsibilities, to establish goals for meeting these responsibilities, and to specify the means for achieving the goals. By fully utilizing the planning and management features of the FMFIA process on a regular basis, managers have built-in controls for identifying the most vulnerable steps in accomplishing their goals. Once managers have identified the desired actions for accomplishing their goals, the process is adaptable to frequent assessment of high-risk areas in order to allow corrective actions to be implemented early in the process, when they are most meaningful. Most of the recommendations in this Report are well suited to the management techniques of the FMFIA process. By including major action items in the Internal Control documentation of the responsible managers, progress will be effectively tracked.

To ensure documentation of and accountability for FMFIA decision making (see Appendix K, Case Study 6), the Committee's staff recommends that the Senior Council on Management Controls formalize its decision process to document and forward its recommendations to the Administrator. The Senior Council should prepare decision papers for the Administrator reflecting each member's view on whether an issue should be declared as a material weakness.



#### **e. Audit Follow-Up**

Although EPA has recently allocated additional resources to audit follow-up, the Agency has not been effective in this area. It is essential that the Agency establish accountability to ensure that its commitments in response to audits are kept and that corrective actions effectively remedy the problem identified. Otherwise, the current process, through which successive audits raise identical problems, will continue. The validation of corrective action is essential to maintaining the Agency's credibility. Accordingly, the Committee's staff makes the following recommendations:

- (1) The Administrator should delegate authority and responsibility to the Chief Financial Officer (CFO) as the Agency's single audit management official, to oversee all audit actions and ensure appropriate follow-up and corrective action by program offices and Regions. The audit action officials named by OIG should develop and implement a response to the audit and, with the concurrence of the AA for OPPE on GAO audits, will develop and implement an appropriate corrective action plan.
- (2) The action official should be accountable for completion of corrective action before closing an OIG or a GAO audit.
- (3) The CFO should review corrective actions before the action official may close an OIG or GAO audit. The CFO should consult with OPPE regarding the programmatic effectiveness of the corrective action taken in response to GAO audits.
- (4) The CFO should develop a system of routinely evaluating all corrective actions implemented as a result of an OIG or GAO audit. The evaluation would occur two to three years

after the corrective action has been implemented. The purpose of the evaluation is to determine if the corrective action has corrected the problem(s) identified in the audit and to evaluate whether or not further improvements are needed.

- (5) The CFO should publish an annual "Lessons Learned" report by December 31 that summarizes the results of all GAO and OIG audits on contracts management, the corrective actions implemented, and the results of any evaluations that have been completed during the previous fiscal year. The report will be sent by January 31 to all managers who have contract responsibility and be available for all contract managers.
- (6) The CFO should consider the creation of an automated data base, with capabilities similar to those used by legal staff for case law research, which would contain all OIG and GAO audits and Agency responses. The purpose of this system would be to provide managers, contract personnel, and audit follow-up officials with comprehensive access to program and contract audits. It would also provide early warnings of contracts management problems. This type of automated system would prove useful in implementing recommendations (4) and (5) above. The CFO should coordinate with OPPE on any automated data base for GAO audits and responses.

## **f. Case Studies**

Appendix K contains several case studies summarizing specific contracts management problems. The case studies include recommendations which apply only to the circumstances set forth therein.

## **2. MANAGEMENT INFRASTRUCTURE**

The major thrust of these recommendations is to build a formal organizational structure that would support quality contracts management in EPA.

### **a. Reorganization of OARM**

EPA's OARM has a wide range of responsibilities, including facilities management, personnel, procurement and contracts management, and budget. The Assistant Administrator for OARM is also the Agency's Chief Financial Officer. This welter of responsibility deprives contracts management and other fiscal responsibility of needed attention. As Senator Glenn has remarked:

In some cases, CFO positions are being tacked onto the already overburdened shoulders of their assistant secretaries for administration or management as an afterthought. This practice all but ensures that these very important jobs - and thus financial management - will get short shrift in many agencies.<sup>4</sup>

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<sup>4</sup>Congressional Record S18549 (Daily ed., November 26, 1991).

Contracts management must be given the stature and attention that it deserves. Accordingly, the Committee's staff recommends that the Agency's key business functions --resource management, acquisition and assistance -- become the sole focus of an Assistant Administrator-level office, headed by the Chief Financial Officer. The Agency's primary financial functions would then reside in a single, strong office whose exclusive focus would be matters pertaining to fiscal management and accountability. This office would accomplish its mission through directly managing EPA's financial functions and vigorous oversight of related activities in other parts of the Agency. The Committee's staff believes this focus, placing emphasis on the CFO function, is highly consistent with the spirit and letter of the CFO legislation. The staff interviews with OMB and relevant congressional staff indicate the same. Other functions of the current OARM would be consolidated under an Assistant Administrator for a new Office of Human Resources, Facilities, and Information Management (OHRFIM). (See Appendix F.)<sup>5</sup>

As shown in Appendix F, the proposed Office of Acquisition, Assistance, and Finance (OAAF) would consist of the Office of Acquisition and Assistance Management and the Office of the Comptroller. The head of OAAF would be the Chief Financial Officer (CFO) and the Senior Procurement Executive of the Agency.

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<sup>5</sup>The plain language of Section 205 of the Chief Financial Officers Act of 1990, Pub. L. 101-576, codified at 31 U.S.C. § 901, may be interpreted to establish the Chief Financial Officer of each agency as a presidentially appointed/Senate (PAS) confirmed position. The proposed reorganization accordingly would not increase the total number of EPA Assistant Administrator-level PAS's already statutorily authorized. Thus, the AA for OAAF would use the PAS position authorized by the CFO Act, and the AA for OHRFIM would use the PAS position currently filled by the AA for OARM.

## **b. Organization of New OAAM**

We recommend that the new Office of Acquisition and Assistance Management (OAAM) consist of a staff Office of Suspension and Debarment and at least three divisions -- a Procurement Division (PD), the Grants Administration Division (GAD), and the Policy, Evaluation and Training Division (PETD) -- which would take effect upon clearance of the AA-level reorganization.

The Committee's staff recommends a reorganization of the functions of suspension and debarment into an Office of Suspension and Debarment (OSD), reporting directly to the Director, OAAM. This reorganization would properly align suspension and debarment activities, currently in the Grants Administration Division, into one staff office to serve both the grants and contracts functions. The OSD would be responsible for managing the Hearing Officer function and the duties of the S&D Debarring official. OSD would be responsible for ensuring contractor and grantee compliance with federal law and regulations and overall national policy development, direction and oversight. Finally, we recommend that the Agency reconsider the resources required for these functions and ensure appropriate allocation of resources, especially to increase communication with state and local officials.

The Procurement Division (PD) would be responsible for the placement of national contracts and would be geographically located in Washington, D.C., RTP, and Cincinnati. Each of the three locations would report functionally and organizationally to the Director, PD. The post-award administration of contracts would not take place in OAAM.

The Policy, Evaluation and Training Division (PETD) would combine certain resources from both the current PCMD and the Grants

Administration Division to provide stronger, more effective policy development, training, and evaluation for procurement and grants. The Division would promote and monitor strategic planning; develop effective workload models; implement workforce planning, training and staff development for acquisition and assistance professionals; interpret and establish policies and guidance; establish quality performance measures and evaluate the Agency's contracts and grants programs; provide advice and guidance to SPOs; perform quality assurance and quality control review; perform cost review and closeout functions; and maintain communications and information management systems for acquisition and assistance activities.

The Grants Administration Division would consist of the current functions of the Grants Administration Division except that: (1) its policy functions would be in the PETD, and (2) its suspension and debarment function would be located in a staff office to the Director, OAAM.

We recommend that the Office of the Comptroller consist of its current three divisions -- the Resources Management Division (RMD), the Financial Management Division (FMD), and the Budget Division (BD) -- with the following changes of responsibilities, which would take effect as part of the reorganization:

- (1) The Agency's GAO liaison and audit follow-up function and associated resources would transfer from the Office of Policy, Planning and Evaluation (OPPE) to the Resource Management Division, Office of the Comptroller, consistent with its role of OIG audit follow-up and FMFIA coordination.

- (2) The functions and resources of the National Contracts Payment Division in RTP would transfer to the Financial Management Division, Office of the Comptroller. Staff would remain geographically located in RTP, NC.
- (3) In keeping with our recommendation to analyze extra- and intramural resource options through the budget process, the Budget Division (BD) would be responsible for the Agency's activities to implement OMB Circular A-76, which are currently in RMD. (See Section IV.B.3., Allocation of Resources -- effective September 1, 1992.)

#### **c. Placement of Competition Advocate**

In order to ensure full independence to promote competition in contracting, the Competition Advocate would report directly to the Director of OAAM.

### **3. ALLOCATION OF RESOURCES**

#### **a. Affirmative Use of the Budget Process for Acquisition Decisions**

EPA will continue to contract out elements of its work to the private sector. The Agency needs a planning process that assures the best use of both EPA FTEs and contractors in accomplishing its mission. EPA's use of contracting mechanisms must be coordinated through the annual budget process. We believe this process should be used to ensure that contracting decisions are reviewed and approved in advance by senior Agency officials and that appropriate scrutiny is applied to each decision

about whether to contract out specific categories of work. As part of that process, the Office of the Comptroller's Budget Division would be responsible for issuing EPA's budget call letter, coordinating with the Office of Acquisition, and ensuring that EPA's A-76 program is used effectively to evaluate contracting.

In preparation for the FY95 budget submittal, EPA should review its use of contractors Agency-wide. By November 30, 1992, PCMD should develop guidance that identifies criteria to assist with the analysis of the appropriate use of contractors. The guidance should address issues such as personal services, IGF, conflict of interest, and cost-effectiveness. By February 28, 1993, each program office should be responsible for developing its overall resource allocation, together with its justification for contract resources. The submission should include an analysis of contractor use versus EPA employees and a set of recommendations for resource allocation based on that analysis.

#### **b. Adequacy of Resources for Contracts Management**

The Agency must recognize the importance of contracts management activities within its current workload models. Program offices should review existing models to ensure that pricing factors identify contracts management as a cost element. OAAM should review current pricing factors and determine their appropriateness for the next workload model cycle. OAAM should develop a workload model for contracts management -- both for contracting offices and program offices' contracts management functions.

In order to improve EPA's ability to estimate resource demands, we recommend that the Agency develop a pilot program to test systems (using



time sheets and time-and-motion studies) that document time and resources allocated to contracts management. Effective systems are available that could serve as models for the Agency, e.g., the system used in the State of Connecticut's Department of Environmental Protection. The proposed OAAM should field-test the pilot system throughout the contracts management infrastructure, including contract placement and administration activities in Headquarters, Regions, and laboratories. The results should assist the Agency in improving its workload modeling and workforce planning.

In addition, the Agency should consider increased use of temporary employees. The Office of Personnel Management recently promulgated regulations allowing the hiring of private sector temporaries.<sup>6</sup> While these regulations have been used primarily for secretarial help, there is no limitation on the nature of services that can be obtained.<sup>7</sup> The Agency should explore whether further advantage may be taken of the flexibility conferred by these regulations, which allow EPA to retain contractor personnel in situations where EPA employees cannot fill a critical need.<sup>8</sup> This mechanism allows the Agency to retain services needed for the performance of its mission, within the context of clear restraints that would avoid the problem of personal services. The Committee's staff believes,

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<sup>6</sup>54 Fed. Reg. 3766 (Jan. 25, 1989), 5 CFR Subpart E (1991).

<sup>7</sup>The regulation excludes only SES and managerial or supervisory positions. 5 CFR § 300.502.

<sup>8</sup>EPA must assure that the contracting firm remains the legally responsible employer. The contracting firm has the responsibility to recruit, test, hire, train, assign, pay, provide benefits and leave, discipline, and terminate the temporary employee. However, it is inescapable from the nature of the work performed by temporaries (especially secretarial employees) that the Agency must exercise day to day supervision.

however, that the current 45-day limitation on temporaries is needlessly brief and recommends that EPA seek to have the regulations modified to extend that time period. The Agency may wish to consider rotation of contractor personnel in order to avoid continuous supervision.

#### **4. HUMAN RESOURCES**

These recommendations address the underlying causes identified in many of the interviews and focus groups relating to the ability of EPA to attract and retain the right people in contracts management positions. The specific areas of recommendations are workforce planning, recruiting, career management, and rewards and recognition.

##### **a. Workforce Planning**

The new Office of Acquisition and Assistance Management (OAAM) and EPA program offices need to employ basic workforce planning techniques to identify the skills needed to perform contracts management functions. In addition, to implement the Committee staff's recommendations on the contracts management infrastructure, accountability and contracting teams, OAAM should be able to use established workforce planning methods to anticipate the recruitment, training and development of staff and teams to perform the needed functions.

Strategic planning should address what EPA does in terms of its mission; budget planning should tell the Agency the FTEs and dollars it has to get the work done, acquisition planning should help the Agency determine how it should carry out the work -- through EPA staff, contracts,

grants, IAGs, cooperative agreements, etc. -- and workforce planning should enable the Agency to anticipate who will perform contracts management jobs.

OHRM should assist OAAM, the Office of the Comptroller, and OPPE in integrating workforce planning into the overall planning framework of the Agency to support contracts management activities in OAAM and in the AA-ships and Regions.

OAAM should initiate a pilot analysis within one AA-ship or Region to focus on future human resource needs, on-board skills, existing gaps, and proposed recruiting, training and development efforts to support contracts management activities. The analysis should result in the creation of a "Contracting Skills Inventory" used to identify the levels of qualifications and resource skills of persons presently involved with contracts administration. Individual Development Plans or Training Plans should be used to supplement the technical expertise already found in the organization. The deadline for this is December 31, 1992.

#### **b. Recruitment**

In order to ensure a well qualified contracts management workforce, beginning October 1, 1992, all requests to OHRM for vacancy announcements should indicate the percentage of contracts management work to be performed, together with a description of associated duties such as technical review, invoice review, and contractor monitoring and performance evaluation.

The subject matter expert in the program office should work with the staffing specialist in OHRM to identify the knowledge, skills and

abilities (KSAs) required by the position so that the applicant will know exactly what the duties of the position are.

By October 1, 1992, OHRM and OAAM should develop or revise model language for contracts management performance standards for all employees with contracts management responsibilities; OAAM should be responsible for disseminating this standard by October 15, 1992. The model should include such items as timely planning of work assignments, financial monitoring, invoice reviews and detailed evaluations of contractor performance.

By October 30, 1992, programs and other offices should review all current position descriptions and FY93 Performance Standards to ensure that these reflect contracts management responsibilities. Managers and supervisors involved with contracts management duties should assign appropriate weights for such work to their staff's respective Performance Standards.

### **c. Career Management**

To address the problem of lack of career advancement for technical experts, OHRM should examine the Agency-wide applicability of the Office of Research and Development's system of non-managerial career tracks for senior scientists. In the long term, this approach should help alleviate the problem of scientists and engineers going into managerial careers by default, without the motivation and interest in management and administrative responsibilities such as contracts management.

OAAM and OHRFIM should evaluate the existing grade structure for contract managers by December 30, 1992. By October 1993, OAAM and OHRM should correct disparities between the grade structure for

contract managers and the grade structure for other program personnel. OAAM should also review career tracking of the contracting profession at EPA and should further consider methods for encouraging rotations through placement and administration, Regions and Headquarters, policy and training.

To provide some career incentive for technical staff at pre-supervisory levels, the Agency should give weight to the quality of contracts management skills demonstrated by the employee, recognizing the planning, analysis, negotiation, oversight, tracking and evaluation abilities. These abilities will be considered in crediting for managerial experience when an individual applies for a supervisory or managerial position.

#### **d. Rewards and Recognition**

Effective cultural changes are brought about by the appropriate use of both positive and negative incentives. The recommendations throughout this section provide both. In line with the earlier discussion of contracting teams, the Agency should recognize and reward team performance as visibly as individual accomplishments. This should reinforce the cultural shift toward teamwork, which is a key factor in the organizational and functional changes recommended above.

Contracts management should be recognized by Agency managers as important to the fulfillment of EPA's mission. The Agency should recognize effective contracts management through existing awards and incentives or through specially tailored program awards. The Agency should promote the practice of individual program offices setting aside specific funds for contracts management awards, especially for staff who perform these duties as part of their jobs, but not on a full-time basis.

The granting of peer awards is another approach that has proven successful in the Office of Water for recognizing "customer" service. Peer awards are "on-the-spot" cash awards actually recommended and awarded by staff to other staff in or outside the organization for excellent service. This could be particularly appropriate for contracts management service, since it is a major form of internal customer-supplier interaction.

There must also be a recognition of poor performance by staff or managers. Agency managers must use the personnel rules available for dealing with poor performance. Simply shuffling employees from one job to another or putting them in an area considered to be unimportant is not acceptable. Not taking the appropriate personnel actions when problems occur sends the same negative message as rewarding a manager for only doing part of his/her job correctly.

## **5. INVOLVEMENT OF LEGAL COUNSEL**

The Agency should reallocate current legal resources or hire more contract attorneys to provide legal support for contracts management. A QAT consisting of legal and contracting Agency personnel from Headquarters, RTP, Cincinnati, the Regions and the field laboratories, should be created to determine where new contract attorney resources should be placed, based on the location of COs and their corresponding legal needs. The QAT should complete its study by January 31, 1993. The Committee's staff is convinced that contract attorneys are needed in EPA's Regional offices and believes that they should report to the

Regional Counsels.<sup>9</sup> Once such a reporting relationship is established, the Committee's staff recommends that the reporting relationship among the Regional Counsel, General Counsel, and Assistant Administrator for Enforcement be adjusted to accord with the Regional Counsel's increased counseling function.

The Committee's staff also recommends that PETD and OGC amend the Acquisition Handbook to address in more detail the roles and responsibilities of EPA contract attorneys. The Handbook should provide for OGC or ORC (as appropriate) concurrence for legal sufficiency in the final contract award. This action should be completed by January 31, 1993.

The Committee's staff recommends that contract attorneys periodically review standard or boilerplate contract language to determine whether it continues to serve the needs of the Agency. The first review should be completed by June 1, 1993. Thereafter, reviews should be completed by June 1 of each succeeding year.

Finally, the Committee's staff recommends that contract attorneys be present at any meetings between the Agency and the contractor where the contractor counsel is present. The contracting staff should notify the contracting attorney in advance of such meetings.

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<sup>9</sup>The Regional Counsels should manage these attorney resources rather than OGC because (1) regional contracting staff report to the Regional Administrators, who are advised by the Regional Counsels; (2) there will be no disconnect between staff attorney and management, unlike the existing disconnect between the attorneys in RTP/Cincinnati and OGC management; (3) legal contract questions requiring the interpretation of state law can be resolved by regional contract attorneys holding local state bar licenses; and (4) the Regional Counsels and new contract attorneys can be readily trained. The Committee staff notes that NASA, DOE and GSA have decentralized their contract legal support--field attorneys are recruited locally and report to the field legal managers.

## **C. CONTRACT PROCESSES**

### **1. Establishment and Dissemination of Policy and Guidance**

The Agency needs a strong central source for consistent, easily accessible guidance on contracting policy. The formation of OAAM, with a single policy unit, will establish the necessary organizational foundation; a strong management presence is required to exert the necessary leadership for a comprehensive national contracts management program. Areas where substantive guidance is particularly needed are set forth in Section C.1.b. below.

#### **a. Promote Clarity in Policy and Guidance**

##### **(1) Consolidation and Clarification of Guidance**

By February 1, 1993, the new Policy, Education and Training Division (PETD) should have sole responsibility for issuing guidance for contracts management. By December 15, 1992, the SPO in each office that has issued guidance relating to contracts management should compile in notebooks and clearly label all guidance that is currently in effect. The notebooks should include a complete and accurate index of all documents contained therein. The SPO should provide a complete copy of the guidance notebooks to PETD and OGC. By March 1, 1993, PETD and OGC should have reviewed all of these notebooks and identified all guidance requiring modification. By May 1, 1993, PETD and OGC should issue a schedule for revising, replacing, or clarifying all guidance that requires modification. If OGC and PETD do not have existing resources



to perform this function in a timely manner, then a group composed of 10 to 15 senior attorneys, COs, and POs should be appointed to review the guidance. The group members should report to PETD and OGC but may work out of their home offices.

All guidance must be clearly labeled as guidance, dated and numbered. If a document is not clearly labeled as guidance, it should not be considered or followed. A system should be developed for filing the guidance in a central notebook. By October 30 of each year, PETD should issue an updated index of all existing guidance.

Requests for guidance development or amendments should be sent to the Director of PETD. The Director should evaluate the requests and develop a schedule for issuing this guidance. The Director would then issue the schedule listing the guidance in the development and planning stages, with an estimated date of completion on or before January 1 and July 1 of each year. The Director would send the schedule to the AAs, OGC, the RAs, SPOs, Regional Counsel, and all Division Directors and Branch Chiefs involved in contracts management.

## **(2) Hotline or Bulletin Board**

OAAM should make clear guidance readily available for questions of an ad hoc nature. We recommend that an information hotline or electronic bulletin board be established so that contract managers throughout the Agency may get quick and practical advice for real situations or an interpretation of existing guidance to address situations as they arise under contracts. This action should be completed by June 1, 1993.

### **(3) Single Guidance Document**

We recommend that the Acquisition Handbook be abolished and that its contents be merged with the Contracts Management Manual and EPAAR (if applicable, e.g., EP clauses -- See (1.)c. below) so that a single guidance document supplements the Acquisition Regulations for all Agency contract managers. OAAM should complete this merger by June 1, 1993.

#### **b. Establish Subject Matter of Needed Guidance**

EPA especially needs to develop and issue guidance in the following areas:

##### **(1) Contractor Performance**

PETD should issue user-friendly guidance on management of contracts, including preparation of SOWs for contracts, WAs and DOs, preparation of independent government estimates (IGEs) of cost, and formal documentation of oral contract authorization. This action should be completed by December 1, 1992. Better SOWs and IGEs would help eliminate inappropriate personal services and provide better control of contractor costs.

PETD should develop a guidance package, including a videotape, for use by performance evaluation boards. The package would promote more consistent implementation of the performance evaluation process for determination of award fee in cost reimbursable contracts. This guidance should be prepared by January 1993.

## **(2) Avoiding Contractor Performance of Inherent Governmental Functions**

Although EPA has issued an order with general guidelines regarding what is appropriate to contract out, this has not proved in practice to be sufficient. The Committee's staff therefore recommends that PETD publish guidance containing a more comprehensive list, with examples of the sorts of tasks for which it is inappropriate to contract out (e.g., drafting regulations or congressional correspondence, reviewing state program submissions).

In addition, EPA can monitor for inappropriate use of contractors by directly addressing the issue in the contracting documents. Currently, EPA Order 1900.2 requirements are inserted into all new contracts. The guidance to be developed should also include standard language to be inserted in SOWs for contracts, DOs and WAs to the effect that no IGF should be performed. OAAM should consult with OGC in preparing this language.

## **(3) Avoiding Personal Services**

EPA needs to take firm steps to counter the perception and reality of personal services. The Agency must alter its relationship with contractors to make it clear that it is EPA that directs the contractors, not vice versa. The Agency must ensure that SOWs are as clear and precise as possible, so that the need for continual supervision of the contractor is minimized. EPA needs to draw some bright lines around what is and is not allowed and make clear to all personnel the importance of following the rules.

At the same time, as long as EPA remains heavily dependent upon contractor support, the Agency should be careful not to create an adversarial relationship or atmosphere of distrust between EPA and contractor employees. Efficient operations require an open dialogue between EPA and contractor employees.

Officials at other agencies warn that an adversarial culture between the agency and contractors has adversely affected the quality and timeliness of the product involved.<sup>10</sup> Rather, the Agency must encourage building of teams that include contractor employees and EPA employees. EPA should build on other agencies' experience in using TQM principles to improve the quality of both contracts management and performance. In implementing its recommendations, the Committee's staff emphasizes the need to keep these two principles in balance. (See Appendix K, Case Study 7). Specific recommendations regarding personal services follow:

- (A) OAAM and OGC should jointly prepare a detailed guidance document and videotape dramatizing the EPA policy on personal services. The guidance should include as many specific examples as possible of what does and does not constitute personal services. This should be accomplished by February 1, 1993.

All EPA employees should be required to attend training on this subject. In addition, an annual refresher course, perhaps taught in conjunction with ethics, should be required for each employee whose job involves

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<sup>10</sup>Interviews with DOD, NASA officials.

contract-related issues, as well as that employee's supervisors and managers.<sup>11</sup>

- (B) The Administrator should send a memorandum to all employees instructing them not to participate in the hiring or firing of individual contractor employees. Evaluation of such employees should be conveyed to the appropriate contractor supervisor through the CO or the CO's appointed representative. By July 1, 1993, OHRM should draft revisions to EPA's personnel regulations to specifically make a violation of these instructions a serious offense.
- (C) By October 1, 1992, all future contracts should include provisions, to be developed by OAAM and OGC, (i) that employees of contractors and subcontractors be trained, at the contractor's expense, in personal services restrictions; and (ii) that contractors have adequate management structure in place to supervise and control the performance of their employees.

#### **(4) Avoiding Conflicts of Interest (COIs)**

(A) OAAM could prevent possible COI problems by focusing, to a greater extent, on COI during the planning and acquisition phases. An "up-front" investment in prevention could avoid many COI issues that arise after award of the contract. In consultation with OGC, OAAM should carefully review solicitations and contractor's bids to avoid, neutralize, or

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<sup>11</sup>Cross-reference training.

mitigate potential conflicts of interest and be required to make a written finding of its analysis at each appropriate stage of the procurement. The deadline for implementing these procedures is January 1993.

(B) For every procurement, OAAM should determine whether the contract should include language from Section 13 of EPA's draft COI regulations. The draft regulations would amend Section 1552.212.71 of the EPAAR and require a contractor to certify to the best of his or her knowledge and belief that all actual or potential organizational COIs have been reported to the CO or that no actual or potential organizational COIs exist.

We recommend that each SOW for contracts, DOs and WAs requires contractor submittal within five days of receipt of any known or potential COI.

#### **c. Amendments to EPAAR**

PETD and OGC should review all class deviations to the EPAAR and EP clauses in the Acquisition Handbook to determine which, if any, should be adopted as amendments to the EPAAR. OAAM will then prepare a Federal Regulations notice incorporating those amendments. The deadline for the review of deviations is March 31, 1993, and for the Proposal of Regulations, October 31, 1993.

## **2. LONG-TERM CONTRACT PLANNING**

### **a. Integrated Planning**

We recommend that the Agency fully integrate its strategic, budget, and acquisition planning processes, and that these processes be linked to quality and timely Agency outputs and accomplishment of the Agency's mission. We recommend that the Agency's Budget Reform Task Force, which has made some progress in linking strategic planning and budgeting processes, develop a plan of action, in coordination with OAAF and OPPE, with milestones to implement this recommendation by September 30, 1993.

### **b. Planning Contract Type**

Managers sometimes choose large cost-reimbursement contracts with wide-ranging statements of work because of the lengthy lead times for award of contracts. In order to encourage use and management of appropriate contract types, we recommend the formation of a Quality Action Team (QAT) to study how the Agency can reduce contract award lead time, increase competition, tighten cost and performance controls, better evaluate contractor performance, and more efficiently collect and utilize contractor performance evaluations for future award decisions. OAAM should establish the QAT composed of Headquarters, Regions, and Field personnel by December 31, 1992.

In addition, the Agency should prepare a plan for executing long-term contract planning with the goal of using the most cost-effective contract types, including, where appropriate, fixed price contracts and

hybrid cost-reimbursement contracts. The planning horizon should be three years or longer where existing program plans and known congressional mandates make it feasible. OAAM should coordinate this plan with each program office.

This plan should consider the use of an "omnibus contract," in which either cost-reimbursement or fixed-price WAs are available under the contract. Further, this plan should encourage contract teams to consider negotiating hybrid contracts that would better shift the risk of performance away from the government.

This plan should also include consideration of parallel awards of several smaller cost-reimbursement contracts to prevent over-dependence on any single contractor. Additionally, the plan should consider procuring contracts with overlapping SOWs to provide the Agency with the ability to compete particular WAs among contractors to assure cost-effective contracting.

The deadline for this plan for executing long-term contract planning is February 1993.

### **c. Selection of Contract Type**

OAAM and OGC should modify the Solicitation Review Form to include a specific reference to the fact that appropriate review of the contract type solicited occurred. If a pure cost-reimbursement contract is solicited, this clause should specifically certify that the Agency has met the limitations on utilization of cost-reimbursement contracts set out in FAR 16.301-3.

OAAM should prepare a guidance document regarding the different contract types available to the Agency, along with the advantages



and disadvantages of each type. This document should be completed by February 1993 and included in the plan for contract planning.

**d. Award Fee Contracts**

OAAM should review and modify the policy for determining when an award fee contract is appropriate. This policy should set out the procedure that the contracting officer will use in determining the maximum percentage of award fee available. The policy should be used by COs during the pre-award contract phase. This action should be completed by January 1993.

**3. TRAINING**

Virtually every focus group raised the inadequacy of contracts management training as a major problem. The Committee's staff agrees that the Agency's training program is woefully inadequate and in need of fundamental revitalization. We offer the following recommendations:

**a. Training Staff Workload**

OAAM and OHRM should perform a workload analysis to assess the need for additional training staff. This action should be completed by November 15, 1992. Additional staff should be recruited as needed. OAAM and the EPA Training Institute should complete this action by February 15, 1993.

## **b. Improve Contracts Management Training - General**

(1) EPA should examine its contracts management training courses and upgrade or replace them with courses individually tailored to specific contract roles and responsibilities. These courses should be designed by a team consisting of contracts management staff in OAAM and the program offices. Other federal agencies, including the Acquisition Institute and DOD, should be consulted. OAAM must ensure that modified courses eliminate material considered of little or no relevance to the target audience. OAAM should ensure that ethics are included in the subject matter of the contracts management training program, similar to that recently provided in SES and some Regional contracts management training. OAAM must streamline procedures for modifying course material and should institute a process that allows for continuous improvement of course content based on student feedback.

Case studies, role playing, and break-out groups should supplement lectures. Interactive training techniques encourage group discussion and allow groups to surface relevant issues so that they may serve as points of discussion and a basis for group problem solving. Experienced contracting professionals or contract managers should serve as course instructors. OAAM should complete these action and coordinate with the EPA Training Institute by March 1, 1993.

(2) OAAM should develop short (one- to two-hour) seminars on topical issues in contracts management as necessary, establishing target audience attendance requirements as appropriate. The first of these seminars should be prepared by March 31, 1993.

(3) OAAM should also develop a one-hour contracts management orientation videotape for mandatory viewing by all new

Agency hires. OAAM should also provide an on-site trainer to answer questions. This action should be completed by December 1, 1992.

(4) We recommend that by March 1, 1993 all SES managers, ODs, and Division Directors re-certify their FMFIA responsibilities, as they apply to contracts management, through a course offered by the on-site FMFIA coordinator.

### **c. Develop Specific Contract Issue Training**

OAAM should develop a comprehensive training course for COs on the advantages and disadvantages of various types of contracts. This training course should include practical illustrations of the various advantages and disadvantages of particular contract types. In addition, this course should include mock contract negotiations to empower the COs to negotiate hybrid contracts which, when appropriate, would better shift the risk of performance to the contractor. In general, this training should support the recommendations regarding planning contract type. The training course should be ready by September 1, 1993, and the training complete by February 1, 1994.

#### **(1) Practical Orientation Course**

OAAM should develop a brief orientation on contracts management, beyond that provided to all Agency hires, along with a "How To" guide for writing WAs, procurement requests and other common administrative actions. This would help acclimate newcomers to contracts management at EPA while they are waiting to take formal training. This action should be completed by January 15, 1993.

## **(2) COI Training**

The Quality Assurance Unit of OAAM should work with OGC to incorporate a COI training unit, emphasizing realistic case scenarios, into the contracts administration training courses. OAAM and program managers should reinforce the prohibition on contractor participation in developing WAs. This action should be completed by January 15, 1993.

## **(3) Suspension and Debarment Training**

EPA should provide contracts management personnel with the tools and train them in the methods available to enforce contract performance, including training on Suspension and Debarment, with emphasis on how to make S & D an effective tool for controlling contractor abuse. OAAM should develop this training by January 15, 1993.

## **(4) Invoice Review Training**

OAAM should develop training for ACOs and COTRs on invoice review. Emphasis of training should be on the provisional nature of invoice payments and the ACO's option to partially suspend invoice payments while resolving questionable claims and to recover overpayments. OAAM should require certification of attendance as a job standard prerequisite. This action should be completed by May 1993.

#### **(5) Property Management Training**

OAAM should work to improve property management training for contracts managers. The Agency's basic training curriculum must be adapted to include property management, covering at a minimum: (1) the procedures for property justification before its purchase by a contractor, (2) registry of property on the Personal Property Accounting System (PPAS) after purchase, (3) definition of circumstances when property must be registered after its removal from an installed system, (4) transfer of property, and (5) disposal of property in a manner most advantageous to the Agency. The action date for this is March 1, 1993.

#### **4. COST ESTIMATION**

Development of in-house cost estimation skills is an Agency contracts management priority. OAAM should work with program offices to prepare cost estimating guides and the corresponding databases to assist with the development of valid independent governmental estimates. Guides should be completed by October 1992, followed by continual development of databases.

As is already required in the Superfund program, independent cost estimates should be required for all WAs in excess of \$25,000. The SPOs should complete an analysis of the IGE procedures used for their procurement programs and should determine the resource needs for specific cost estimators to ensure compliance with the IGE requirement. The deadline for this is October 1, 1992.

## **5. CONTROL OF CONTRACT COSTS**

OAAM should define invoice review responsibility and accountability for ACOs and COTRs. The guidance should establish a decentralized system of review, placing review authority into Regional and Headquarters program offices<sup>12</sup> and giving acceptance/rejection authority to ACOs.<sup>13</sup> This guidance should also provide for designation of alternate ACOs and COTRs with full authority to act on behalf of primary ACO/COTR.

### **a. Elements of an Invoice**

In coordination with OMB, OAAM should also develop guidance on the requisite elements of an invoice under each major contract type. This guidance should require contractors to submit invoices that include: (i) a reasonable summary of the work performed; (ii) costs defined by individual WA or DO; and (iii) a breakout of labor-hours, labor-mix, and individual line item claims for other direct costs. PCOs should negotiate invoice requirements on all future contracts based on guidance developed above. The deadline for guidance development is September 1, 1993.

### **b. Timing of Review**

Currently, POs have only 15 days for invoice review and the remaining time is used for processing by NCPD. POs do not think that 15

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<sup>12</sup>Headquarters focus group.

<sup>13</sup>Interview with former EPA senior manager.

days is adequate for review. OAAM, in coordination with OGC, should review the approval requirements of the NCPD to determine, consistent with the Prompt Payment Act, whether they could provide more flexibility for thorough review of contractor performance and invoices consistent with good contracts management practices. This action should be completed by January 1, 1993.

#### **c. Invoice Certification**

OGC and OAAM should develop an invoice certification to the effect that the contractor has reviewed all of the costs contained therein and that the costs have been reviewed and determined "allowable." This certification would accompany all invoices being submitted for payment. This should be done by February 1, 1993.

OGC and OAAM must examine where it is possible to enforce contract provisions for denying or reducing payments when performance is not satisfactory. By March, 1993, those offices should issue a joint policy statement defining a strategy to enforce the denied-payment provisions.

#### **d. Indirect Costs**

The Committee's staff recommends that the Agency narrow the definition of employee morale costs in EPA contracts, in the EPAAR, and, ultimately, in the FAR.<sup>14</sup> OAAM and OGC should draft policy with

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<sup>14</sup>The Administration has recently assembled a "SWAT" team consisting of representatives from 12 Federal agencies (including EPA), to examine current integrity structures, procedures, and controls in government contracting. Its recommendations are due in October, 1992.

specific definitions of categories of both allowable and unallowable indirect costs. The definition of allowable employee morale costs should mirror the rules regarding federal employees as far as possible. This should be completed by December 30, 1992.

By February 28, 1993, OAAM and OGC should draft a contract clause to be incorporated in all new contracts that incorporates the above policy on the allowability of specific indirect costs. The clause should contain (1) a list of certain costs which are not allowable as employee morale costs, and (2) an illustrative list of the types of costs for which the provision is intended to apply. The new clause should be incorporated into new contracts entered into by EPA, and added to existing contracts where possible.

While a standard contract clause will help, we also recommend revising the EPAAR (48 CFR Chapter 15) to clarify which costs are reasonable. We believe that, if pursued aggressively, this can be accomplished in a relatively short period of time.<sup>15</sup>

Amendments to contract clauses and the EPAAR would help the Agency control indirect costs. However, contractors may still argue that

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<sup>15</sup>The process for amending the EPAAR is exempt from OPPE Steering Committee oversight, and thus is not subject to the same process as is required of the Agency when it amends its various regulations. The Executive Council of Administrative Officers serves as a coordinating and reviewing body for EPAAR amendments instead of the Steering Committee.

While the EPAAR does not follow the traditional regulation development route, it does have its own process consisting of approximately twenty-one (21) steps and taking anywhere from nine to twelve months. The EPAAR amendment is in-house, other than the public comments phase. EPAAR amendments are not likely to be "major rules" that are subject to OMB review pursuant to Executive Order 12291.



their costs are allowed by the FAR.<sup>16</sup> To reduce uncertainty, EPA may consider obtaining class deviations from the FAR and should work with OMB to revise the FAR along the lines discussed for contract clauses and the EPAAR. A FAR deviation may be used to implement a change in contracting policy that is "inconsistent" with the FAR. The changes possible in a deviation from the FAR can go further than those made through an amendment to the EPAAR, since they do not, by definition, require consistency with the FAR.<sup>17</sup>

Since the FAR is a government-wide regulation, approval of an amendment by the full Civilian Agency Acquisition Council (CAAC) can require a significant amount of time and effort by the Agency. EPA must work with OMB in aggressively pushing for the necessary changes to be made to the FAR regarding indirect costs.

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<sup>16</sup>Contractors have argued that if they do only a small portion of their business with the government, we do not have the "right" to dictate issues with regard to their indirect costs. See Regional interviews. In addition, contractors have used the "but see 31.201-1 and 31.205-13" provision in the entertainment costs section of the FAR (FAR 31.205-14) as an argument to claim otherwise unallowable entertainment costs as allowable employee morale and welfare costs. FAR 31.205-14 reads as follows: "Costs of amusement, diversion, social activities, and any directly associated costs such as tickets to shows or sports events, meals, lodging, rental, transportation, and gratuities are unallowable (but see 31.205-1 and 31.205-13). Costs of membership in social, dining, or country clubs or other organizations having the same purposes are also unallowable, regardless of whether the cost is reported as taxable income to the employees." (emphasis added)

<sup>17</sup>While the FAR places a premium on Agency-wide consistency in the procurement community, it recognizes the need for deviations from it when necessary to meet the specific need and requirements of an agency. The FAR actually encourages the development and testing of new techniques and methods of acquisition through the use of FAR deviations. See Generally, FAR Subpart 1.4.

A FAR class deviation is a deviation that affects more than one contracting action. Class deviations take approximately three months from the time EPA seeks FAR consultation until the Class Deviation is effective. Class deviations involving cost principles require approval of the Civilian Agency Acquisition Council.

Some contractors apply a voluntary management reduction (VMR) of their allowable indirect costs to their major customers, including EPA. The VMRs may be decreased to offset questioned costs or penalties if additional unallowable costs are found by the auditor. Therefore, the VMR acts as a cushion to keep the firm from being affected by any later disallowance of indirect costs. If unallowable costs are found after the discount has been determined, some firms' practice has been not to reimburse EPA, but rather to reduce the VMR by the amount of the unallowable costs.<sup>18</sup>

Using VMRs places the burden on the government to either accept the adjustment or determine the amount of unallowable costs by audit means. Since DCAA does not review every transaction, it is possible that the actual unallowable costs may exceed the VMR and not be detected. The use of VMRS is not an acceptable alternative to complying with Cost Accounting Standard 405 and FAR 31.201-6, which require contractors to identify specifically and exclude unallowable costs from incurred cost proposals submitted to the government. Moreover, the VMR may actually encourage contractors not to be as conscientious as necessary when making allowability claims since they see the VMR account as available to cover errors. In addition, unless unallowable costs have been removed from the bill prior to the discount, it is unclear how much, if any, savings the VMR actually produces.

While in theory, it is not objectionable to provide a discount to major customers, contractors must remove unallowable costs and account

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<sup>18</sup>Hearing, Subcommittee on Environmental Energy and Natural Resources, Committee on Government Operations, April 9, 1992. See also, GAO Testimony, "Federally Sponsored Contracts, Unallowable and Questionable Indirect Costs Claimed by CH<sub>2</sub>M Hill," on oversight and investigations, Committee on Energy and Commerce, House of Representatives, March 19, 1992.

for their costs in accordance with the FAR regardless of whether they subsequently choose to offer a discount. These sorts of charges indicate, as do the charges for employee morale, the need to institute mechanisms and processes to both detect and prevent such charges from being made.

Inadequate contractor internal controls also contribute to excessive costs.<sup>19</sup> For example, a major Superfund contractor<sup>20</sup> did not adjust its charges to reflect differences between federal regulations and company policy. When the contractor's own policies were more lenient than was the FAR, the firm claimed the full amount rather than claiming the portion the FAR allowed.<sup>21</sup> This is unacceptable. When contracting with the government, the costs contractors submit must be adjusted to conform to the FAR's standards.

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<sup>19</sup>GAO Testimony before the Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, House of Representatives, March 19, 1992.

<sup>20</sup>GAO Testimony, "Federally Sponsored Contracts Unallowable and Questionable Indirect Costs Claimed by CH<sub>2</sub>M Hill," Subcommittee on Oversight and Investigations, Committee on Energy and Commerce, House of Representatives, March 19, 1992.

<sup>21</sup>For example, the FAR specifies that only actual selling costs associated with the sale of an employee's home are allowable. CH<sub>2</sub>M Hill, on the other hand, provides employees with (1) an incentive payment of 6 percent of the average of two appraised values or the actual sale price, whichever is higher, up to a maximum of \$15,000 and (2) a 1-1/2 percent self-sale premium of the selling price for sales in which the employee finds a buyer and carrying costs or loan points are not incurred. The net effect of this in one case was that an employee's home was sold by a realty company, who was paid \$66,000, and the employee was paid \$14,700 for the sale.

## **7. SUSPENSION AND DEBARMENT AND OTHER ADDITIONAL CONTROLS**

### **a. Enhanced Use of Suspension and Debarment**

Suspension and debarment can be a strong inducement for diligent compliance by contractors with their responsibilities under FAR, EPAAR and contract provisions, and for contractor maintenance of high standards of integrity.<sup>22</sup> Merely terminating a contract with a contractor in such circumstances allows the contractor the opportunity to enter into future Agency contracts and cause a repetition of such problems, or to contract with other federal agencies or departments and have them experience similar serious contract performance problems encountered by the EPA. The elevation of the S & D program as an Office of Suspension and Debarment would enhance both the prominence of the program and the Agency commitment to utilize this process when warranted.

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<sup>22</sup>Under FAR 9.406-2, a contractor may be debarred in the event of:

- (a) a conviction of or civil judgment for a variety of offenses, including fraud, falsification or destruction of records, making false statements, or the commission of any other offense indicating a "lack of business integrity or business honesty that seriously affects the present responsibility of a Government contractor or subcontractor."
- (b) a preponderance of the evidence indicates that there has been a violation of the terms of a Government contract, such as a willful failure to perform in accordance with the terms of the contract, or a history of failure to perform or of unsatisfactory performance of a contract; or
- (c) any other cause of so serious or compelling a nature that it affects the present responsibility of a contractor.

Under FAR 9.407-2, a contractor may be suspended if the suspending official suspects, based upon adequate evidence, similar problems as those noted above exist.

## **b. Penalties for Improper Claims**

DOD has statutory authority<sup>23</sup> to assess penalties when the Secretary determines that a contractor has sought an unallowable cost. The penalty amount is two times the amount of the cost.

The Committee's staff recommends that EPA explore the possibility of obtaining this authority. OGC and OAAM should coordinate in preparing a report that evaluates the relative merits of 10 U.S.C. § 2324, identifies the procedure for obtaining such authority, and includes a recommendation whether the Agency should seek such authority.

## **c. Include Contract Clauses That Provide for Interest Payments on Monies Improperly Claimed and Paid**

When a contractor includes in its invoice costs that are unallowable and these are paid by the government, the error may not be found until an audit of the contract is performed, if at all. Even if the government is able to identify and prove that these costs were improper and obtain reimbursement from the contractor, the contractor would have had the benefit of the use of the funds for the interim period. This provides an incentive for contractors to include as many questionable costs as possible.

OGC and OAAM should draft a standard contract clause that provides the payment of interest on monies paid by EPA based on invoices for costs that were not allowable. This clause should be used in all EPA contracts. Action: OGC with OAAM; deadlines: contract clause--November 30, 1992; EPAAR Amendment--December 1, 1993.

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<sup>23</sup>10 USC § 2324

## **8. CONTROL OF GOVERNMENT PROPERTY**

Under the proposed reorganization, the responsibility for setting standards for all property management will lie within the Office of Human Resources, Facilities, and Information Management (OHRFIM). The Office of Acquisition, Assistance, and Finance (OAAF) will be directly responsible for the administration of contract property. The two organizations should form a Quality Action Team (QAT) to evaluate the need for additional property management personnel necessary to ensure that property management is in full compliance with established guidance and procedures. The QAT shall also consider the need for and possible benefits of decentralizing property management to Regions where appropriate. The study of additional personnel needs and analysis of decentralization of property management should be completed by March of 1993.

OHRFIM should also develop a plan for addressing the material nonconformance of reconciling the Personal Property Accountability System with the Integrated Financial Management System. This should be completed by March of 1993.

### **D. TRACKING IMPLEMENTATION**

The Committee's staff found that one of the most consistent reasons that past efforts to solve contracts management problems have not been implemented was the lack of a tracking system for the corrective actions taken. Managers have not been held accountable to ensure that effective actions were implemented. Therefore, the Committee's staff recommends that the Deputy Administrator require each Regional,

Assistant and Associate Administrator to provide a written report detailing what actions have been taken to comply with the recommendations in this Report and to submit a schedule for compliance with any actions that have not been completed by October 1, 1993. A similar report would be required each October 1 thereafter until the recommendations have been fully implemented.

Beginning in 1993, by October 1 of each year, each RA and AA should submit a report to the Deputy Administrator detailing the state of contracts management in their offices.

The detailed report on the state of contracts management in their offices and the report on the status of compliance with the recommendations in this Report should be used in the annual performance evaluation of the RAs and AAs. No RA or AA should receive an outstanding in a performance evaluation or be eligible for any awards related to contracts management if either of these reports is late or inadequate or if there are serious deficiencies in the administration of contracts in their respective offices.

**E. CHRONOLOGICAL SUMMARY  
OF THOSE RECOMMENDATIONS  
WITH DUE DATES**

#	DATE	ACTION	WHO	F/O*
		<b>1992</b>		
1.	By Sept. 1, 1992	Budget Division will be responsible for implementation of OMB Circular A-76 activities.	Office of the Comptroller	--
2.	By October 1992	Completion of cost estimating guides to assist with development of valid independent governmental estimates.	OAAM and Program Offices	--
3.	By Oct. 1, 1992	Future contracts include provisions that employees of contractors and subcontractors be trained in personal services restrictions, and that contractors have adequate management structure in place to supervise and control the performance of their employees.	OAAM OGC	--
4.	By Oct. 1, 1992	Complete analysis of the IGE procedures used for procurement programs and determine resource needs for specific cost estimators to ensure compliance with the IGE requirement.	SPOs	--
5.	Begin Oct. 1, 1992	All vacancy announcements indicate the percentage of contracts management work to be performed and associated duties.	OHRM	--
6.	By Oct. 1, 1992	Develop model language for contracts management performance standards for all employees with contracts management responsibilities.	OHRM, OAAM	See 7.
7.	By Oct. 15, 1992	Disseminate language in #6.	OAAM	See 6.



8.	By Oct. 15, 1992 and annually thereafter	Provide a written evaluation of the contract administration in each program for the performance evaluation period	SPOs	--
9.	By Oct. 30, 1992	Review all current position descriptions and FY93 Performance Standards to reflect contracts management responsibilities.	Program Offices and Regions	--
10.	By Nov. 1, 1992	Submit Implementation Plan to OAAM outlining the restructuring of the roles and responsibilities of contract administration personnel.	Offices and Regions	See 38.
11.	By Nov. 15, 1992	Perform workload analysis to assess the need for an additional training staff.	OAAM, OHRM	See 37.
12.	By Nov. 30, 1992	Guidance developed for analysis of appropriate use of contractors.	OAAM	See 39.
13.	By Nov. 30, 1992	Contract clause is drafted providing for penalty or payment of interest on monies paid by EPA on invoices for unallowable costs.	OGC, OAAM	See 67.
14.	By Dec. 1, 1992	Issue guidance on management of contracts including preparation of SOWs, WAs, DOs, and IGEs.	PETD	--
15.	By Dec. 1, 1992	Develop a one-hour contracts management orientation videotape for mandatory viewing by all new Agency hires.	OAAM	--
16.	By Dec. 15, 1992	Each Office with its own guidance on contracts management compiles notebooks and labels guidance currently in effect and provides copies to OAAM and OGC.	SPOs	See 46, 53, 65.

17.	By Dec. 30, 1992	Evaluate the existing grade structure for contract managers.	OAAM, OHRFIM	See 62.
18.	By Dec. 30, 1992	Draft policy with specific definitions of categories of both allowable and unallowable indirect costs.	OAAM, OGC	See 40.
19.	By Dec. 31, 1992 and annually there-after	Publish a "Lessons Learned" report summarizing the results of all GAO and OIG audits on contracts management.	CFO	See 30.
20.	By Dec. 31, 1992	Individual Development Plans or Training Plans are used to supplement the technical expertise already found in the organization.	Offices and Regions	--
21.	By Dec. 31, 1992	Formation of QAT to study how the Agency can improve contracting processes such as: reduce contract award lead time, increase competition, tighten cost and performance controls.	OAAM	--
22.	By January 1993	Develop a guidance package, including video, for performance evaluation boards.	PETD	--
23.	Im- plement by January 1993	Review solicitations and contractors' bids to avoid COI and prepare written finding of analysis at each appropriate state of the procurement.	OAAM, OGC	--
24.	By January 1993	Review and modify policy for determining whether an award fee contract is appropriate.	OAAM	--
25.	By Jan. 1, 1993	Review approval requirements of NCPD to determine consistency with the Prompt Payment Act.	OGC, OAAM	--

26.	By Jan. 15, 1993	Develop an orientation on contracts management and guide for writing work assignments, procurement requests, etc., to acclimate newcomers to contracts management.	OAAM	--
27.	By Jan. 15, 1993	Incorporate a COI training unit into the contracts administration training courses	OGC and QA Unit of OAAM	--
28.	By Jan. 15, 1993	Develop training for contracts management personnel on enforcing contract performance, including Suspension and Debarment.	OAAM	--
29.	By Jan. 31, 1993	Amend the Acquisition Handbook to address in more detail the roles and responsibilities of EPA contract attorneys	PETD, OGC	--
30.	By Jan. 31, 1993 and annually there- after	Distribute the "Lessons Learned" report to managers with contract responsibilities.	CFO	See 19.
31.	By Jan. 31, 1993	QAT to determine where new contract attorney resources should be placed completes its report.	OAAM, OGC	--
32.	By February 1993	Prepare a plan for executing long-term contract planning.	OAAM, Offices and Regions	--
33.	By February 1993	Complete guidance document on different contract types and their advantages and disadvantages.	OAAM	--
34.	By Feb. 1, 1993	The new Policy, Education, and Training Division will have sole responsibility for issuing guidance for contracts management.	OAAM, PETD	--

35.	By Feb. 1, 1993	Develop invoice certification by contractors that document the invoice has been reviewed and all costs determined "allowable."	OGC, OAAM	--
36.	By Feb. 1, 1993	Prepare detailed guidance document and videotape on policy on personal services	OAAM, OGC	--
37.	By Feb. 15, 1993	Additional training staff recruited.	OAAM, OHRM	See 11.
38.	Begin by Feb. 15, 1993	Implementation Plans initiated.	OAAM, Regions and Offices	See 10.
39.	By Feb. 28, 1993	Using OAAM's criteria, develop overall resource allocation and justification for contract resources.	Offices and Regions	See 12.
40.	By Feb. 28, 1993	Place clause to incorporate policy on allowable and unallowable indirect costs and place in new contracts and where possible, in current contracts.	OGC, OAAM	
41.	By March 1993	Report completed by QAT formed to evaluate need for additional property management personnel and analysis of benefits of decentralizing property management.	OHRFIM and OAAF	--
42.	By March 1993	Complete plan for addressing the material nonconformance of reconciling the Personal Property Accountability System with the Integrated Financial Management System.	OHRFIM	--

43.	By March 1993	Examine where it is possible to enforce provisions for denying or reducing payments when performance is not satisfactory and issue a joint policy defining a strategy to enforce the denied-payment provision.	OAAM, OGC	--
44.	By March 1, 1993	Recertification of FMFIA responsibilities as they apply to contract management through a course offered by the on-site FMFIA coordinator.	SES manag- ers, ODs and DDs	--
45.	By March 1, 1993	Agency's contract training curriculum is adapted to include property management.	OAAM	--
46.	By March 1, 1993	Review guidance notebooks compiled by the SPOs and identify modifications required.	PETD, OGC	See 16, 53, 65.
47.	By March 1, 1993	Examine contracts management training courses and upgrade or replace them with courses tailored to specific roles and responsibilities.	OAAM, Program Offices and EPATI	--
48.	By March 31, 1993	Review all class deviations to EPAAR and EP clauses to the Acquisition Handbook to determine which should be adopted as amendments to the EPAAR.	PETD, OGC	See 66.
49.	By March 31, 1993	First seminar prepared on short, topical issues in contracts management.	OAAM	--
50.	By April 1993	Develop for Agency review performance standards and job description elements that accurately describe contracts management functions for COTRs.	OAAM, OHRM	--

51.	In April 1993 and annually thereafter	Provide informal oral or written evaluation of contract administration in each program at each performance evaluation period.	SPOs	--
52.	By May 1993	Develop training for ACOs and COTRs on invoice review with certification of attendance as a job standard prerequisite.	OAAM	--
53.	By May 1, 1993	Issue a schedule for revising, replacing, or clarifying all guidance requiring modification.	PETD, OGC	See 16, 46, 65.
54.	By June 1, 1993 and annually thereafter	Review standard contract language to determine if it serves the needs of the Agency.	Contract Attorneys	--
55.	By June 1, 1993	Acquisition Handbook abolished and contents merged with the Contracts Management Manual.	OAAM	--
56.	By June 1, 1993	Information hotline or electronic bulletin boards established for contract managers for quick and practical advice.	OAAM	--
57.	By July 1, 1993	Issue schedule listing the guidance in development and planning stages	PETD	--
58.	By July 1, 1993	Revise EPA's personnel regulations to specifically make violation of personal services a serious offense.	OHRM	--

59.	By Sept. 1993	Develop a plan of action with milestones to fully integrate strategic, budget and acquisition planning processes.	Budget Reform Task Force, OAAF, OPPE	--
60.	By Sept. 1, 1993	Develop guidance on the requisite elements of an invoice under each major contract type.	OAAM, OMB	--
61.	By Sept. 1, 1993	Prepare comprehensive course for COs on advantages and disadvantages of various types of contracts.	OAAM	See 68.
62.	By October 1993	Correct disparities between the grade structure for contract managers and the grade structure for other program personnel.	OAAM, OHRFIM	See 17.
63.	By Oct. 1, 1993 and annually there- after	Written report submitted to the Deputy Administrator detailing actions taken to comply with the recommendations in the Report and schedule for compliance with outstanding actions.	AAs/RAs	--
64.	By Oct. 1, 1993 and annually there- after	Written report submitted to the Deputy Administrator detailing the state of contracts management in their Offices.	AAs/RAs	--
65.	By Oct. 30, 1993 and annually there- after	Updated index of all existing guidance is issued.	PETD	See 16, 46, 53.
66.	By Oct. 31, 1993	Proposal of Regulations will be made after the Review of Deviations in the EPAAR and clauses in the Acquisition Handbook.	PETD, OGC	See 48.

67.	By Dec. 1, 1993	Amend the EPAAR to provide for penalty or payment of interest on monies paid by EPA based on invoices for costs not allowable.	OAAM, OGC	See 13.
68.	By Feb. 1, 1994	Training of COs completed on the advantages and disadvantages of various types of contracts.	OAAM	See 61.

\*F/O - Recommendations with follow-on responses.



## **FUNCTIONAL "TIE-INS" OF SCCM RECOMMENDATIONS**

### **(BASED ON REPORT)**

This is intended to identify common issues contained in the Report's Recommendation. The listing indicates Recommendations interrelated based on subject matter. For example, the Report Recommendations dealing with Conflict of Interest will be found in Recommendations 23 and 60.

- o A-76 Review: #1
- o Audits: #19,30
- o Communications: #56
- o Conflict of Interest: #23,27,60
- o Contract Management Manual: #55
- o Cost Estimation (IGE): #2,4,14
- o EPAAR/FAR: #48,66,67
- o FMFIA: #44
- o Guidance:

Guidance Notebook #16,34,46,53,57,65

#### **Create Guidance/Policy on:**

Appropriate Use of Contractors #12  
Award Fee #24  
Contract Language #54  
Contract Types #33,61,68  
Cost Estimation (IGE) #2  
Denial of Payment for Poor Performance #43  
Development of Statements of Work #14  
Development of Work Assignments/Delivery Orders #14,26  
Indirect Costs #18,40,

Inherent Government Functions #63  
Invoices #35,52,60  
Penalty or Payment of Interest Clause #13,67  
Performance Evaluation Board #8,22,51  
Personal Services #3,36,58  
Prompt Payment #25  
Property Management #41,42,45  
Standard Contract Language #54  
Suspension/Debarment #28

- o Human Resources: #5,6,7,9,10,11,15,17,20,26,37,50,62
- o Integration into Strategic Planning Cycle: #32,59
- o Implementation Plans: #38,63,64
- o Legal Support: #29,31
- o Long-term Planning: #32
- o Quality Action Teams: #21,31,41
- o Resource Allocation: #11,39
- o Training: #15,27,28,45,47,49,52,61,68

## **APPENDICES**



**APPENDIX A**  
**ADMINISTRATOR'S STANDING COMMITTEE**  
**ON CONTRACTS MANAGEMENT**  
**COMMITTEE MEMBERS**

Christian R. Holmes, Chair and Acting Assistant Administrator  
for Administration and Resources Management

Laurie Goodman, Associate Administrator for Regional Operations  
and State/Local Relations

Richard Guimond, Deputy Assistant Administrator for Solid Waste  
and Emergency Response

Edward Hanley, Deputy Assistant Administrator for Administration  
and Resources Management

Morris Kay, Regional Administrator, Region VII

Victor Kimm, Deputy Assistant Administrator for Prevention,  
Pesticides, and Toxic Substances

David J. O'Connor, Director, Procurement and Contracts Management Division  
Office of Administration

Alvin Pesachowitz, Director, Office of Information Resources Management

Martha Prothro, Deputy Assistant Administrator for Water

Michael Shapiro, Deputy Assistant Administrator for Air and Radiation

John Skinner, Deputy Assistant Administrator for Research  
and Development

Michael Thibault, Assistant Director of Policy and Plans  
Defense Contract Audit Agency \*

Greer Tidwell, Regional Administrator, Region IV

Anna Virbick, Deputy Inspector General \*

Gerald Yamada, Principal Deputy General Counsel

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\* Specially invited guests.



**APPENDIX B**  
**ADMINISTRATOR'S STANDING COMMITTEE**  
**ON CONTRACTS MANAGEMENT**  
**STAFF MEMBERS**

John R. Barker Director	Regional Counsel U.S. EPA - Region IV
Leonard H. Shen Deputy Director	Deputy Superfund Enforcement Counsel Office of Enforcement U.S. EPA - Headquarters
Mary Kay Lynch Associate Director	Chief, Office of Program Operations Office of Water U.S. EPA - Region IV
William O. Ross Team Leader	Chief, State Requirements Section Office of Emergency and Remedial Response U.S. EPA - Headquarters
John Alter	Quality Coordinator Immediate Office of the Assistant Administrator Office of Water U.S. EPA - Headquarters
Jessica Barron Editor	Human Resources Management Division Office of Administration and Resources Management U.S. EPA - Cincinnati
Bruce Bellin	Counsel, Office of Criminal Enforcement Office of Enforcement U.S. EPA - Headquarters
Paul Connor	Chief, Enforcement Action Section Office of Waste Programs Enforcement U.S. EPA - Headquarters
Joseph Freedman	General Attorney Office of General Counsel U.S. EPA - Headquarters
David Garrison	Assistant Regional Counsel U.S. EPA - Region III

Lisa Haage	Section Chief, Hazardous Waste Branch Office of Regional Counsel U.S. EPA - Region IX
Sam Jamison	Chief, Removal Contracts Unit Office of Contracts and Grants Administration U.S. EPA - Region IV
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Ralph Rizzo	Management Analyst Management and Organization Division Office of Administration U.S. EPA - Headquarters
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Joseph Salata	Management Analyst Resource Management Division Office of the Comptroller U.S. EPA - Headquarters
Kathy Seikel	Special Assistant to the Director Procurement and Contracts Management Division Office of Administration U.S. EPA - Headquarters
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Office of Regional Counsel  
U.S. EPA - Region II**

**David Schachterle**

**Assistant Regional Counsel  
Office of Regional Counsel  
U.S. EPA - Region VIII**

**APPENDIX C:**  
**U.S. ENVIRONMENTAL PROTECTION AGENCY**  
**FEDERAL CONTRACTS MANAGEMENT ADVISORY BOARD**

Dr. Laurie Broedling  
Associate Administrator for Continuous Improvement  
National Aeronautics and Space Administration  
Washington, DC

Mr. Richard Hopf III  
Associate Administrator for Acquisition Policy  
U.S. General Services Administration  
Washington, DC

Mr. Jerry Riso  
Deputy Assistant Secretary  
U.S. Department of Education  
Washington, DC

Mr. Robert Scott  
Deputy to the Commander  
Defense Contract Management Command  
U.S. Department of Defense  
Washington, DC

Mr. Allan Joseph (Advisor)  
Rogers, Joseph, O'Donnell and Quinn  
San Francisco, CA

Professor Ralph Nash (Advisor)  
George Washington University  
National Law Center  
Washington, DC



**APPENDIX D**  
**LIST OF SOURCE DOCUMENTS, INFORMATION, AND REFERENCES**

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## **APPENDIX E**

### **APPROACH AND METHODOLOGY**

#### **TOTAL QUALITY APPROACH**

In general, the SCCM Staff identified conditions that are symptomatic of problems in the current procurement and contracts management system and barriers to improved quality in its processes. Total Quality Management and other quality improvement concepts guided this study and preparation of the report. These include customer focus; quality as a priority equal with cost, schedule, and volume produced; a balance of short- and long-term goals; an emphasis on preventing errors rather than detecting them after the fact; quality as a shared responsibility; flat, integrated organizational structures; and the involvement of people at all levels in problem solving.

The staff asked the individuals interviewed, as well as the focus group participants, to point out root causes of problems and to look outside the existing milieu for ideas to make systemic and lasting improvements to the process and system. Some of the most enlightening and productive sessions were the focus groups conducted across the country to give front-line staff, COs, Contract Specialists, POs, WAMs, and DOPOs the opportunity to express their views on the contracts management world they work in daily.

The results and recommendations of this Report reflect the voice of those who actually perform the work and the intelligence, creativity and honesty of a broad range of managers and staff throughout EPA. The staff hopes that the use of quality management principles for this study will encourage and result in the kind of cultural change needed in the Agency.

#### **SCCM STAFF COMPOSITION**

The 23-person staff is multi-disciplinary -- consisting of individuals from EPA Headquarters and Regions as well as from the Department of Justice. (See Appendix B.) Staff members were selected for their fact-finding abilities, analytical and writing skills, capacity to work under pressure, and experience with Agency systems. Included among the staff are POs, WAMs, and COs.

Early in the process, staff members were briefed in depth on such issues as the budget process, report preparation, audit resolution and the role of legal counsel in the present contracts management arena. The staff had access to, and conducted interviews of, experts in the field of contract management. Staff members were encouraged to raise questions and engage in discussions with Agency contract specialists and outside experts. The diversity of the group resulted in the objective inquiry which we believe underlies this report.

## REVIEW OF PAST REPORTS

The staff examined existing reports and audits on contracts management in order to become familiar with already identified problems and to evaluate the effectiveness of the solutions adopted in the Agency's responses. During this phase of the study, it became evident that several appropriate solutions previously recommended had not been implemented. Given the Agency's current commitment to correct long-standing contracts management problems, some of these solutions may be worthy of reconsideration and thorough implementation.

The staff also reviewed the Agency's GAO report files, which contained over 500 post-1980 titles. The OIG provided a list of 33 contracts management audits conducted since 1980. The GAO reports were first screened for their relevance to contracts management issues. The staff then created a preliminary list of 31 GAO and 21 OIG reports, reviewed these, obtained copies of other relevant corresponding testimony from the GAO and the OIG, and established a core list of 14 GAO and 32 OIG reports for further analysis. (See Appendix D.)

The criteria for selecting a report for comprehensive staff review were: (1) direct GAO or OIG review of an EPA contract issue; (2) GAO or OIG review of a government-wide contract issue with EPA specifically mentioned; or (3) GAO or OIG review of other issues directly relevant to contracts management. The OIG's recent audit of the CSC contract received particular emphasis in this review process due to its comprehensive portrayal of the EPA's contracts procurement and management process.

The staff also consulted with the Management and Organization Division, EPA's in-house management consulting group, regarding prior contracts management studies. Several important reports were subsequently identified and analyzed. In particular, the staff studied Contracts Management: The People and the Process issued December 7, 1988. The goal of this process was to avoid approaches that had been ineffective and to highlight potentially effective past recommendations that have not been implemented.

## CONGRESSIONAL DIALOGUE

Several members of Congress raised issues about the Agency's ability to manage its contracts. These were triggered by problems identified in the recent OIG audit of the CSC contract. The staff met with key Congressional members to seek guidance on the study process and reviewed transcripts from Congress-



sional hearings dealing with the EPA's contracts management.<sup>1</sup> The review centered on assessments of common themes of Congressional concern about EPA's need to improve its management of contracts and reduce the potential for waste, fraud and abuse.

## **PROBLEM ASSESSMENTS**

Administrator William K. Reilly and Acting Assistant Administrator for Administration and Resources Management Christian R. Holmes also requested that all Regional and Headquarters senior executives submit reports assessing present and potential problems in contracts and program management. These "Problem Assessments" included any vulnerabilities identified in pertinent OIG or GAO audits or during the FMFIA process; any schedules for corrective action not yet completed; and any other relevant information. All Problem Assessments were catalogued and reviewed for inclusion in the study. (See Appendix I.)

## **INTERVIEWS AND FOCUS GROUPS**

The staff conducted individual interviews and focus groups at a representative sample of offices. Visits were made to Regions III, IV, V, VII and IX, Research Triangle Park NC, Cincinnati OH, Las Vegas NV, and Athens GA. A video conference was conducted with Region VI. Interviews were also conducted with many employees in Headquarters offices including OARM, OSWER, OAR, OW and OPPTS. Approximately 100 individual interviews, ranging from staff to Assistant/Regional Administrators, were conducted.

To collect comparable information during these interviews, the staff developed contracts management interview guides. These guides were based on information collected in previous reports and audits, areas of Congressional concern, and the staff's own experiences in Agency program and contracts management. They were also tailored to the individual interviewee's level of

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<sup>1</sup>In particular, transcripts from the following Congressional Hearings were reviewed:

1. March 4, 1992 and March 19, 1992  
Congressman John Dingell  
EPA's procurement and management of Computer Sciences Corporation (CSC)
2. March 2, 1992  
Senator John Glenn  
EPA's procurement and management of CSC
3. April 9, 1992  
Congressman Michael Synar  
Payment by EPA of questionable costs

responsibility and, where possible, expertise in Agency and contracts management.

The staff generally conducted interviews in two-person teams, although certain interviews were conducted by a single staff member. In the alternative to personal interviews, telephone and videoconference equipment was used. The findings from the interviews were assimilated into preliminary site analyses that were used as information sources for relevant portions of the study.

The staff conducted thirty-three (33) focus groups that included 275 Agency employees. These were "horizontal," that is, each group consisted of similarly situated individuals. The size of the groups varied from seven (7) to twenty (20) employees with similar contract responsibilities.

## **SUGGESTION BOX AND HOTLINE**

The staff also instituted both a Hotline and a Suggestion Box to collect additional data and to offer contributing individuals the option of anonymity. On April 15, 1992, John Barker, SCCM Staff Director, sent a memorandum announcing the Hotline and the Suggestion Box and asking all EPA employees to recommend improvements to the EPA's contracts management programs and to identify problems and barriers to improvements. Additionally, a flyer advertising the Suggestion Box and Hotline was distributed desk to desk to all Agency employees. Staff prepared protocols for collecting this information and, when appropriate, referring relevant information to the OIG. Similar Suggestion Box invitations were made to EPA's thirty largest contractors.

## **LEGAL ISSUES AND ANALYSIS**

Throughout the data collection process, a variety of legal issues arose. In consultation with legal experts (e.g., Professor Ralph Nash, George Washington University National Law Center), the staff evaluated applicable statutes and regulations with a view toward identifying authorities contained in existing statutes and regulations, and, as appropriate, potential revisions in the statutory and regulatory framework governing contracts management. In particular, the staff focused on the FAR, CICA, PPA, the CFO Act, and the EPAAR.

## **BENCHMARKING: OTHER FEDERAL AGENCIES, FEDERAL CONTRACT MANAGEMENT ADVISORY BOARD AND THE PRIVATE SECTOR**

The staff analyzed institutional systems outside of EPA and interviewed managers and contracting specialists to obtain recommendations on successful contracts management processes. In particular, the staff met with personnel from General Services Administration, National Aeronautics and Space Administration, Department of Defense, Department of Energy, and the Naval Air Systems Command. Information from these visits was assimilated into site assessments for inclusion in the Report. The staff also met with XEROX

management in order to get the private sector perspective on contracts management.

In a final attempt to solicit external, quality guidance, the Committee convened a Federal Contract Management Advisory Board whose members reviewed our analysis, options, and recommendations. (See Appendix C.)

## **METHODOLOGY AND THE RESULTING ANALYSIS**

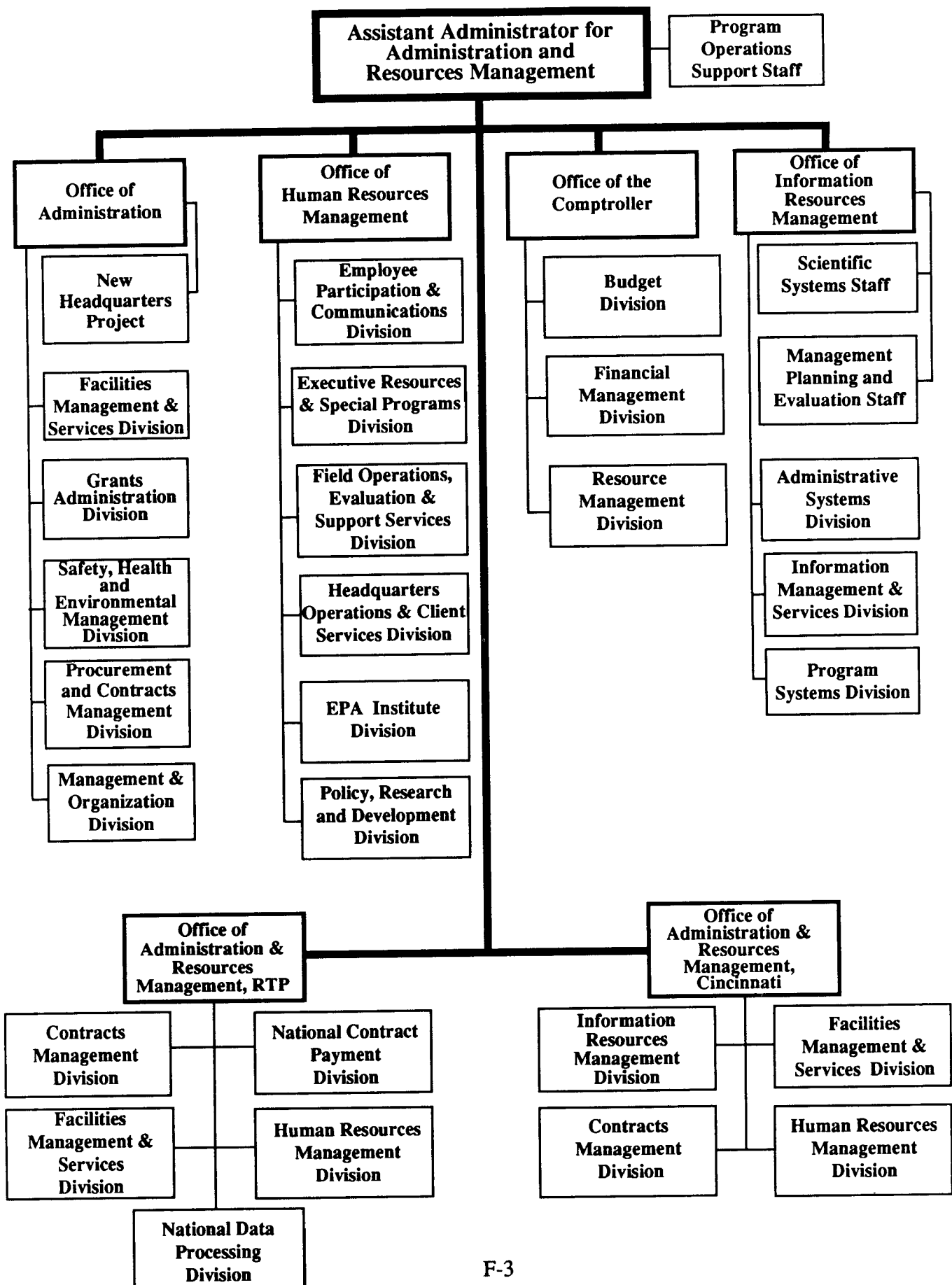
The analyses, conclusions and recommendations contained in the Report grew out of the sources and methods described above. The objective was to look at the Agency's contracts management problems as a whole rather than piecemeal. The approach that the staff adopted therefore focuses both on specific, daily management issues and on the larger framework from which these issues arise.



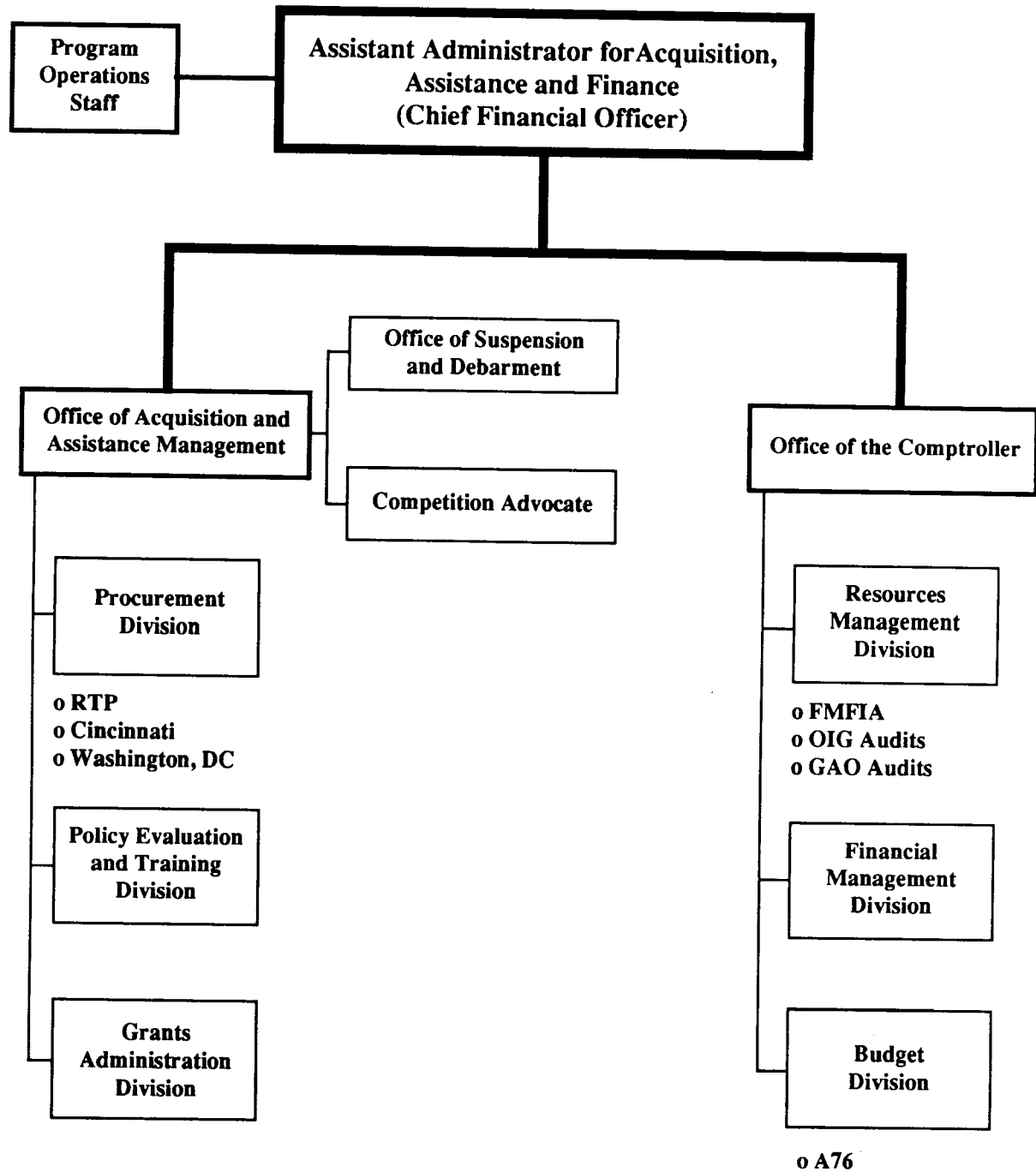
## **APPENDIX F: ORGANIZATIONAL CHARTS**



**Chart #1**  
**Current Structure**  
**Office of Administration and Resources Management**

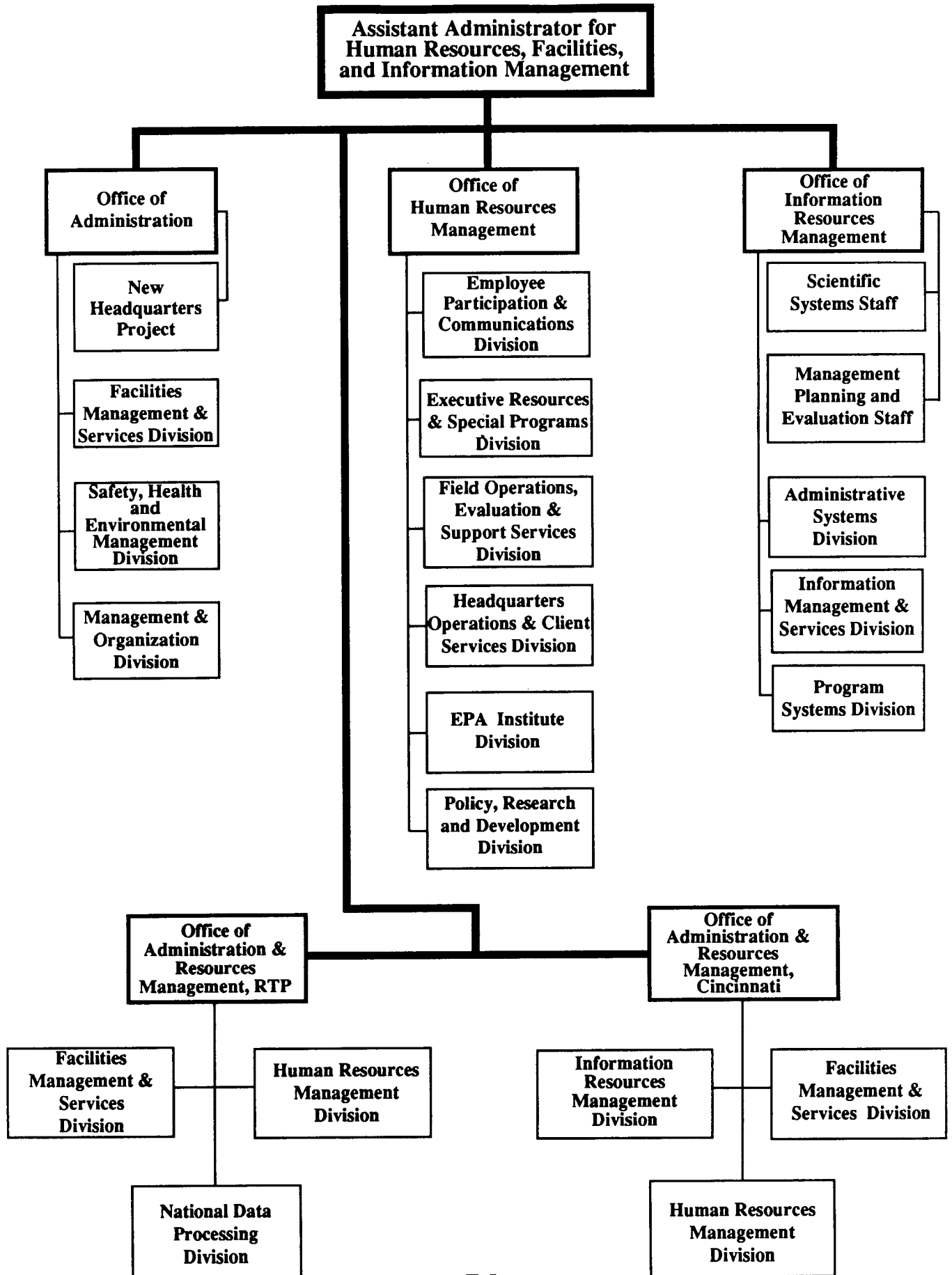


**Chart #2**  
**Proposed Reorganization**  
**Office of Acquisition, Assistance and Finance**





**Chart #3**  
**Proposed Reorganization**  
**Office of Human Resources, Facilities, and Information Management**



# **STANDING COMMITTEE ON CONTRACTS MANAGEMENT RECOMMENDATION ON THE OFFICE OF ADMINISTRATION AND RESOURCES MANAGEMENT**

## **CURRENT ORGANIZATION/STRUCTURE**

- ◆ Assistant Administrator
- ◆ Chief Financial Officer
- ◆ Office of the Comptroller
- ◆ Procurement and Contracts Management Division (PCMD)
- ◆ Grants Administration Div. (GAD)
- ◆ Research Triangle Park (RTP)
- ◆ Cincinnati
- ◆ Facilities Management and Services Div.
- ◆ Office of Human Resources Management
- ◆ Office of Information Resources Management
- ◆ New Headquarters Project
- ◆ Safety, Health and Environmental Management Division
- ◆ Management and Organization Div.

## **PROPOSED ORGANIZATION/STRUCTURE**

- ◆ Assistant Administrator
- ◆ Chief Financial Officer
- ◆ Office of the Comptroller
- General Accounting Office Audits
- ◆ PCMD
- ◆ GAD
- RTP (Contract Mgmt. & National Contract Payment Divisions)
- Cincinnati (Contract Mgmt. Division)
- Direct Contracts Property Management
- Standards for Agency Property Management.
- Standards for Financial Personnel
- Standards for Integrated Fin. Mgmt. System
- Standards for Program Information Systems
- Standards for Planning Systems
- Standards for Evaluating Systems

**NOTE:** The Chief Financial Officer's Act of 1990 provides broad authority to direct, manage, and provide policy direction and guidance to Agency activities related to: 1) financial management planning and budgeting, 2) recruitment, selection and training of financial personnel, 3) financial management systems, and 4) reports on execution of the budget and performance against objectives.

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**Legend:**

- ◆ Functions/Activities under Current Organization
- Functions/Activities Changed by Proposed Organization

<b>CURRENT</b>	<b>MAJOR CONTRACTING RESPONSIBILITIES<sup>1</sup></b>	<b>PROPOSED</b>
CO	Sign a contract	PCO
CO	Obligate funds	PCO/ACO
CO	Issue Work Assignments	ACO
CO	Modify any contract terms or conditions	ACO
CO	Terminate a contract	ACO
CO	Accept supplies and/or services	COTR
PO	Monitor contract administration by WAM (COTR) under LOE contract	ACO
PO	Review overall technical and financial progress	ACO
PO/WAM	Provide technical direction	COTR
PO	Monitor use of government property	ACO
PO	Certify vouchers	ACO
PO	Recommend contract modifications to the contracting officer.	COTR
PO	Assist in contract closeout	COTR
WAM	Develop statement of work and LOE estimate for specific work assignments under term form contracts	COTR
WAM	Monitor performance on work assignment	COTR
WAM	Recommend work assignment amendments to PO (ACO)	COTR
WAM	Review relevant portions of monthly technical and financial progress reports	COTR
WAM	Assist the PO (ACO) in voucher certification	COTR
DOPO	Determine labor categories for delivery orders under time and materials contracts	COTR

CO - Contracting Officer  
PO - Project Officer  
WAM - Work Assignment Manager  
DOPO - Delivery Order Project Officer

PCO - Placement Contracting Officer  
ACO - Administrative Contracting Officer  
COTR - CO's Technical Representative

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<sup>1</sup>From EPA's "Contract Administration Manual", pages 2-8 through 2-11.

## **APPENDIX G**

### **DESIGNATION OF SENIOR PROCUREMENT OFFICERS**

In his memorandum of February 28, 1992, Christian Holmes, Acting Assistant Administrator for OARM, required Assistant, Associate, and Regional Administrators to "designate a single SES-level manager to serve as 'Senior Procurement Officer' (SPO) with full responsibility for the effectiveness and integrity of all procurement activities in your office. Separate, on-site Senior Procurement Officers are to be designated for each EPA laboratory or major EPA field site." This was the first step taken to improve the management accountability of contracts management.

Since then, the Agency has appointed a cadre of 52 SPOs. The SPOs assisted the Committee staff with data collection for this Report. However, since their appointment, the sustained role of the SPO has been reviewed and questioned by those to whom responsibility was initially delegated. Such questioning, which included span of control, training, and accountability, was welcomed and appreciated by the Committee staff.

The staff recommends consideration of SPOs in the following offices:

- Regions I-X
- Office of International Activities
- Office of Acquisition, Assistance and Finance
- Office of Enforcement
- Office of General Counsel
- Office of Policy, Planning, and Evaluation
- Office of the Inspector General
- Office of Water
- Office of Solid Waste and Emergency Response
- Office of Air and Radiation
- Office of Prevention, Pesticides and Toxic Substances
- Office of Research and Development
- Office of Regional Operations and State/Local Relations
- Office of Congressional and Legislative Affairs
- Office of Communication, Education and Public Affairs
- Office of Human Resources, Facilities and Information Management

Due to the location of contracting in some of the Headquarters program offices, some AAs may desire to designate more than one SPO. By August 1, 1992, it is recommended that each AA/RA, including those with labs and field operations, will present to OAAF a proposal to provide contract oversight and establish reporting relationships for operations within their purview. By August 15, 1992, the AA for Acquisition, Assistance and Finance will concur in the SPO appointments.

## **REGIONAL APPOINTMENT OF THE SENIOR PROCUREMENT OFFICER**

The Committee recommends that Regional Administrators appoint their Assistant Regional Administrators as SPOs. Organization is such that contracts management is already operating in the ARA's office in some Regions. The ARAs have an existing supportive relationship and have built in opportunities to meet and discuss areas of common concern.

## **RESPONSIBILITIES OF THE SPO**

The SPOs are stewards of the integrity of the contracting process and its support systems: resources management, continuing education and training, and budget and strategic planning that emphasizes win-win results. This responsibility and authority cannot be delegated. It is recognized, however, that SPOs will require assistance in the management of contracting resources and support systems. We recommend that SPOs initiate workforce and workload planning immediately within the context of these additional responsibilities to ameliorate requests for appropriate resources.

The SPO's primary functions are: 1) to ensure that all rules, regulations, policy and guidance relating to contracts management are adhered to; 2) to ensure that contracting and its staffing are incorporated into strategic planning, workforce planning, and the budget; 3) to ensure that the Regions and offices receive full value for their contract funds; 4) to ensure that an atmosphere is fostered in which good contracts management practices are a part of the culture; and 5) to ensure that close coordination and timely, two-way communication are maintained with OAAM.

The SPO is responsible for the conduct of his or her CO and COTRs, as well as the CO's and COTRs' adherence to and implementation of policy, guidance, and regulations. Specific duties include:

### **Personnel**

1. Facilitate the training and continued education of the procurement staff. After training requirements are met, each SPO will request the warrant for a CO from OAAM.
2. Provide for career development of procurement personnel, including rotational assignments in placement, policy, and training.
3. Ensure that procurement positions are assigned to qualified personnel.
4. Evaluate the performance of COs within his or her span of control.
5. Establish and oversee programs of continuing education in procurement responsibilities for senior executives, mid-level managers and supervisors, and staff.

6. Coordinate employee recognition programs such as the Contracts Management Award and other procurement staff recognition programs within the office or Region.

## **Processes**

1. Develop long-term procurement strategy, in concert with OAAM, that anticipates program needs and the requirements of the federal and Agency procurement policies and standards. Coordinate the Acquisition Plan Preparation to coincide with the Agency's annual budget.
2. Communicate policy and guidance from OAAM's Policy Evaluation and Training Division to the contracting staff.
3. Develop and disseminate procurement documentation required to keep managers and staff informed and ensure the "early warning" capability to avoid contracts mismanagement rather than relying on audits and other "end-of-the-pipe" controls.
4. Ensure integrity of responses to procurement-related audits and other external assessments of procurement activities; monitor remedial actions to ensure commitments are met; coordinate Quality Assurance functions with OAAM staff.
5. Resolve situations when program goals and contracts management goals seem to conflict. Note: The staff recommends that SPOs review Region 10's action/decision memorandum system for tracking and documenting upper-management decisions. See Region 10 FMFIA letter for 1991.
6. Report on procurement issues and developments at AA/RA staff meetings and other appropriate fora.
7. Subsume the role of the "Program Competition Coordinator" to assist the Agency Competition Advocate to help insure the integrity of the procurement placement process and enhance the Agency's pro-competitive posture.
8. Assist with coordination of the Integrated Contract Management System's (ICMS) design and implementation phases.

The SPOs will use this document to more completely address and define their role in the procurement process. One month after SPOs have been appointed, they will convene a meeting with the AA, OAAF and the Director of OAAM to finalize roles and responsibilities.

The Committee staff also recommends that a QAT be formed at that time for continual improvement of the roles and responsibilities of the SPO. The changes recommended in this Report require long-term diligence. SPOs will serve a different role in the early implementation of these recommendations than three to five years from now, when the Agency is further down the road to process improvement. Therefore, we

recommend that SPOs make short-term (one- to two-year) and long-term (three- to five-year) plans. Short-term responsibilities would include modifying performance descriptions, improving training, and creating workload models. Long-term planning could include refining hiring practices and education systems to meet specific needs, and alignment of the budget and procurement cycle.

## **EDUCATION OF SPOs**

The level of knowledge of the contracting process required to implement their new contracting responsibilities varies among the initial cadre of SPOs. The Committee staff recommended that all receive special training developed by OAAM, to prepare them for their upcoming oversight responsibilities. Many will have received the Contract Management Training for all executives, presented June 4 and 5, 1992. However, more in-depth training will be necessary.

The Committee staff recommends that the in-house procurement experts in OAAM prepare and conduct a special training course for SPOs to further prepare them for their duties. The training will be very specific to the contract process at EPA and will include such issues as a review of current procurement-related audits, review of personal services and IGFs, and major contracts in use at EPA. This training will take place by January 31, 1993.

## **FUTURE APPOINTMENTS AND CONTINUED EDUCATION OF EXISTING SPOs**

It is recommended that the Director of OAAM will establish criteria for education, management experience, and association with contracting activities to which future SPOs must comply before appointment. SPOs will participate in approximately 40 hours of procurement training in their first year, 24 hours of procurement training in their second and third years, and 16 hours of procurement training each year following.



**APPENDIX H**  
**SYNOPSIS OF SUGGESTIONS AND HOTLINE ISSUES**  
**SUBMITTED TO SCCM STAFF BETWEEN APRIL AND JUNE OF 1992**

**SUGGESTION BOX SUMMARY**  
**THROUGH JUNE 5, 1992**

<b>LOCATION</b>	<b>WAM/ DOPO</b>	<b>PO</b>	<b>CO</b>	<b>PROF</b>	<b>ANON</b>	<b>OTH</b>
<b>REGIONS</b>						
System Alignment	5	2		4	6	9
Dependence on Contractors	3			7	3	6
Contracting Processes	12	3		8		16
Audit Backlog						2
Federal Acquisition Regulations						1
<b>HEADQUARTERS</b>						
Systems Alignment		4		3		3
Program Impact on Contracts Management					1	
Dependence on Contractors		1			1	1
Contract Processes	1	2		3		3
<b>LABS/FIELD OFFICES</b>						
Systems Alignment	1	2		5		2
Dependence on Contractors				2		1
Contract Processes	3		1	3		7

WAM/DOPO - Work Assignment Manager/Delivery Order Project Officer

PO - Project Officer

CO - Contracting Officer

PROF - Professional (e.g., manager, scientist)

ANON - Anonymous

OTH - Others whose role was not or could not be identified.

**HOTLINE SUMMARY  
THROUGH JUNE 5, 1992**

<b>LOCATION</b>	<b>WAM/ DOPO</b>	<b>PO</b>	<b>CO</b>	<b>PROF</b>	<b>ANON</b>	<b>OTH</b>
<b>REGIONS</b>						
System Alignment				3		
Program Impact on Contracts Management			1			
Dependence on Contractors	2	1		9	5	
Contract Processes	5		6	25		
Audit Backlog				1		
<b>HEADQUARTERS</b>						
Systems Alignment	1		1	6		
Dependence on Contractors			3	10		
Contract Processes	2		3	6		
Other Agencies				1		
<b>LABS/FIELD OFFICES</b>						
Systems Alignment				8		
Dependence on Contractors				9		
Contract Processes				16		

WAM/DOPO - Work Assignment Manager/Delivery Order Project Officer

PO - Project Officer

CO - Contracting Officer

PROF - Professional (e.g., manager, scientist)

ANON - Anonymous

OTH - Others whose role was not or could not be identified.

## **APPENDIX I**

### **PROBLEM ASSESSMENT SUMMARY**

#### **PROBLEM ASSESSMENTS**

On March 10, 1992, Administrator William K. Reilly requested that all EPA offices supply critical information on contract management within each office. Subsequently, Acting Assistant Administrator for OARM Christian R. Holmes specified the information requested in the "Problem Assessments." Messrs. Reilly and Holmes requested from all Regional and Headquarters senior executives a "Problem Assessments Report" which focused on present or potential problems in the area of contracts and program management. These "Problem Assessments" included any vulnerabilities specifically identified in a program management audit performed by the IG or GAO or otherwise identified during the FMFIA process; any implementation schedules for corrective actions not yet completed; and any other information relevant to the issue at hand. The staff reviewed and catalogued all Problem Assessments to assure their inclusion in the study.

The following overarching patterns and trends were revealed through the Problem Assessments:

- Inadequate training both of individuals directly involved in managing contracts and of their managers
- Faulty accountability and fragmented reporting lines
- Unclear and inconsistent policy and guidance on how to manage contracts
- Poor control and oversight, particularly of Level of Effort contracts, the most commonly used contract type in the Agency
- Inherent weaknesses in the review process both in the pre- and post-award phases of contract management
- Overdependence on contracting, often leading to abuses such as:
  - inappropriate use of on-site contractors
  - contractors that perform inherently governmental functions
  - inadequate attention to conflict of interest
  - personal services relationships with contractors
- Inadequate cost control
- An expanding contract management burden within the Agency coupled with a static contract administration workforce -- that is, an underdevotion of FTEs to the administrative burden associated with contract management

## **CAUSES:**

The assessments revealed pervasive problems that are systemic in nature and are associated with the gradual evolution of an historically technical agency into one that has become highly leveraged -- that is, quite dependent on extra-mural funding to accomplish its mission.

## **CONCLUSIONS:**

Because the leveraging of funding in the direction of contracts rather than in-house resources will continue, the Agency must develop and implement new strategies in order to adapt to a world in which much of its mission is accomplished through contracting. These strategies are described in detail in the recommendations of this report. In general, they consist of:

- A new alignment for the management infrastructure devoted to contracts
- A restructuring of the roles of employees who deal with contracts as a daily, hands-on part of their duties
- A wholesale shift in the Agency culture toward fostering contracts management
- A renewed commitment toward adopting useful conclusions cited in previous contracts management studies
- A major training initiative which effectively buttresses the contracts management function

**SUMMARY OF  
CONTRACT MANAGEMENT PROBLEM ASSESSMENTS  
REQUIRED BY THE ADMINISTRATOR'S MARCH 10 MEMO**

**OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE**

**Problems Identified**

- Superfund material weaknesses (Corrective Action plans developed and routinely monitored);
- ARCS Review (Implementation Plan developed);
- 30-Day Review (Recommendations being implemented);
- OIG Investigation of OSW in 1988 (Internal controls developed);
- OUST PCMD Review and Follow Up, January 1991/1992 (Internal Controls established and upgraded).

**Actions Undertaken**

- Quick review of existing or potential problems;
- QAT established to oversee review of Office internal controls;
- Establish high-level oversight position for contract management (in addition to SPO);
- Identification of Agency-wide issues (possibly for Standing Committee);
- Continuing information on OSWER contracts subject to hearings.
- Institutionalize project officer support group

**Other Comments**

- Managerial training/involvement in contract management needed at all levels;
- Hands-on staff training in contracts management needed;
- Continuing program need for mission support contracts.

**OFFICE OF PREVENTION, PESTICIDES AND TOXIC SUBSTANCES**

**Problems Identified**

- A national delivery order for data entry of enforcement data in each Region may be problematic.

**Actions Undertaken**

- Increased emphasis on Regional oversight;
- HQ staff management of contractor performance;
- Verification of contract personnel clearance for CBI;
- Implementation of AA/OARM 2/28 memo standards.

## **OFFICE OF PREVENTION, PESTICIDES AND TOXIC SUBSTANCES (Cont'd)**

### **Other Comments**

- Ongoing program need for large mission-support contracts.

## **OFFICE OF WATER**

### **Problems Identified**

- Inadequate training;
- On site contractors;
- Personnel turnover/overload;
- Financial/contract management process "disconnects";
- Award fee process - failed incentive;
- Small vs. large contracts management tradeoffs;
- Regional use of HQ contracts;
- Personal services relationships with contractors.

### **Actions Undertaken**

- Formation of senior work group on contract management.
- Terminated all known personal services activity

### **Other Comments**

- Need to meet program responsibilities under good contract management principles.

## **OFFICE OF RESEARCH AND DEVELOPMENT**

### **Problems Identified**

- Contract management identified in FMFIA reports as a major weakness;
- Certain lab problems identified by ORD and IG reviews.

### **Actions Undertaken**

- Creation of Acquisition Management Improvement Initiative to examine and improve acquisition program;
- Establishment of four QATs to address broad contract management issues and develop specific proposals;
- Implementation of AA/OARM's 2/28 memo standards.

## **Other Comments**

- Better management will require increased attention and resources at all levels;

## **OFFICE OF RESEARCH AND DEVELOPMENT**

- Lack of clear policy/guidance communication hampers management;
- Fragmented responsibility/unclear accountability for management of resources.

## **OFFICE OF POLICY PLANNING AND EVALUATION**

### **Problems Identified**

- Inappropriate use of on-site contractors;
- Perceptions of contractor performance of inherently governmental functions;
- Inadequate attention to conflict of interest;
- Personal services relationships with contractors;
- Inadequate cost control.

### **Actions Undertaken**

- Improvements to training and guidance provided to staff and managers;
- Development of 5-year contracting strategy and meeting with potential vendor community;
- Implementation of AA/OARM 2/28 memo standards;
- Development of data system for management information;
- Moved contractors off-site;
- Improvements to voucher review process;
- Established permanent contracts management group reporting to the Senior Procurement Official

## **Other Comments**

- PCMD staffing shortages creates contract management problems that promote program "corner cutting";
- Perception that contract management is OARM "process" responsibility; program office focus is technical "substance" issue;
- Limited program staff interest in contract management as a career focus;
- Lack of accountability in the acquisition process;
- Reliance on contractors for sensitive work at the expense of underfunding poses continuing risk to the Agency, ultimately undermining public confidence in our ability to manage;

## **OFFICE OF POLICY PLANNING AND EVALUATION (cont'd)**

- Systemic problems -- unrealistic government-wide personnel ceilings, difficulty in attracting people to government service, push to contract out services -- should be addressed by Standing Committee.

## **OFFICE OF ENFORCEMENT**

### **Problems Identified**

- None specifically

### **Actions Taken**

- Designation of SPO in OE and NEIC (April 3, 1993 memo from AA/OE to OE managers/supervisors);
- Directed SPOs to re-emphasize proper contractor relationship with contract managers;
- Implementation of AA/OARM 2/28 memo standards;
- Conduct of survey for current/projected contract activities (due 4/10/92);

### **Other Comments**

- None

## **OFFICE OF AIR AND RADIATION**

### **Problems Identified**

- Rapid growth and heavy workload demands and severe time pressures to complete critical projects;
- Heavy workload demands on OAR contract management personnel;
- Use of on-site contractors;
- Growing reliance on fewer, larger contracts over time;
- Separation of project officer from work performance location.

### **Actions Taken**

- Established a Contracts Management Work Group to conduct long-term study of strengths and weaknesses of OAR contract and project management;
- SPO meetings scheduled with OAR contract management personnel during April 1992 to educate and obtain feedback on problems/issues;
- Implementation of management review of OAIAP contracting and scheduling symposium for office POs, DOPOs and WAMs (May 27-28, 1992);
- OMS established contract check list for POs;



## **OFFICE OF AIR AND RADIATION (cont'd)**

- OPR review of all WAs for the scope of work and personal services, and developed questionnaire on inherent government services for major LOE contract;
- OAQPS established workgroup to coordinate review of contracts management activities (including contractors' work space);
- Development of OAR contract assessment checklist to assist in the review of OAR contracts;
- Project-by-project review of CSC delivery orders;
- Development of a 9 step Office Director action plan to ensure OAR application of sound contract management;
- Establishment of QAT to conduct a thorough review of OAR contracting practices and develop 5-year plan.

### **Other Comments**

- None

## **OFFICE OF ADMINISTRATION AND RESOURCE MANAGEMENT**

### **Problems Identified**

#### **OARM-Specific**

- Vulnerabilities in high-dollar volume, multi-task delivery order contracts;
- Dependency on a single contractor to maintain mission-critical management information systems;
- Potential use of contractors to perform inherently governmental functions;
- Government-owned property held by contractors may be at risk;
- Appearance of contractor access to confidential business information;
- Complex regulations create potential for misinterpretation;
- Potential for managers to assign ADP contract systems oversight to insufficiently trained personnel;

#### **Agency-Wide**

- Distinction between contractor and EPA employees may become blurred;
- Potential for appearance of conflicts of interest;
- Possible inadequate contractor financial systems;
- Potential for POs, DOPOs and WAMs to be designated without appropriate training;
- Inconsistent award fee ratings categories;
- Early-warning detection system does not always compel senior management to take action.

## **OFFICE OF ADMINISTRATION AND RESOURCE MANAGEMENT (Cont'd)**

### **Actions Taken**

- AA/OARM visits to four Regions and two field offices;
- Special meeting of Senior Council on Management Controls (April 23, 1992) to consider amending FMFIA letter to President;
- Establishment of Standing Committee on Contracts Management;
- Reorganization of PCMD;
- OARM-led review of EPA contracting strategy;
- Designation of EPA Senior Procurement Officials;
- SES special seminar on contracts management;
- Issuance of guidance to Agency managers on contracts management (2/28/92);
- CSC audit review and performance evaluation.

### **Other Comments**

- Recommend full-scale application of TQM principles to EPA's contracting process.
- Changing deeply embedded culture is a long term effort;
- Quick and decisive action is needed to correct real and potential abuses identified.

## **OFFICE OF COMMUNICATIONS AND PUBLIC AFFAIRS**

### **Problems Identified**

- None

### **Actions Taken**

- Implementation of AA/OARM 2/28/92 memo standards;
- Formation of QAT to develop contract responsibilities and requirements for OCPA (due to AA/OCPA 4/15/92);
- Routing of POs/Commitment Notices through SPO;

### **Other Comments**

- None

## **OFFICE OF REGIONAL OPERATIONS AND STATE/LOCAL RELATIONS**

### **Problems Identified**

- None identified by IG, GAO or FMFIA during last 5 years;

## **OFFICE OF REGIONAL OPERATIONS AND STATE/LOCAL RELATIONS (Cont'd)**

- Investigating personal services occurrence under one work assignment; stop work order issued pending outcome;
- Mixed appropriation funding of one work assignment;
- Contractors working on-site, not in statement of work;
- Incomplete WA files;
- Lack of contract expenditure tracking system;
- Outstanding contract obligations need resolution.

### **Actions Taken**

- Appointment of new Project Officer to manage AScl contract;
- Correction of problems identified by September 30, 1992.

### **Other Comments**

- *None*

## **OFFICE OF GENERAL COUNSEL**

### **Problems Identified**

- Legal review focuses only on placement of larger contracts;
- No routine legal input to contract administration due to lack of resources;
- Insufficient HQ legal support for Superfund contracting;
- Additional FTE needed for Contract Law Branch and Inspector General Division.

### **Actions Taken**

- Provided automated legal research capacity to Agency's attorneys.

### **Other Comments**

- Very limited user of contracts.

## **OFFICE OF THE ADMINISTRATOR**

### **Problems Identified**

- Administrative and performance problems on an OROSLR contract;
- Need to improve procurement policies to prevent unauthorized procurements.

### **Actions Taken**

- Implementation of AA/OARM 2/28 memo standards;

## **OFFICE OF THE ADMINISTRATOR (Cont'd)**

- Reassigned management of OROSLR contract to correct deficiencies;
- Established appropriate contract management procedures for OCEM;
- Providing training for persons in the procurement chain.

## **OFFICE OF INSPECTOR GENERAL**

### **Problems Identified**

- Inconsistent invoice requirements;
- Need for contracts management training;
- Potential for supervision of on-site contractors;
- Backlog of audit requests.

### **Actions Taken**

- Standardized contract processes;
- Moved contractors off-site;
- Provided training for employees involved in contracts management.

## **OFFICE RESPONSES NOT YET RECEIVED BY STANDING COMMITTEE STAFF** (as of June 2, 1992):

## **OFFICE OF CONGRESSIONAL AND LEGISLATIVE AFFAIRS**

## **OFFICE OF INTERNATIONAL ACTIVITIES**

## **REGION I**

### **Problems Identified**

- No specific areas addressed.

### **Actions Undertaken**

- In the process of communicating problems and concerns to the organization;
- Review of on-site contract efforts to identify compliance status;
- Inclusion of contract management measures in performance standards;
- Implementation of AA/OARM 2/28 memo standards.

### **Other Comments**

- Administrator's support needed for FY94 regional budget initiative for regional contract oversight FTE.

## **REGION II**

### **Problems Identified**

- Inadequate cost/pricing capability in Regions;
- No single, reliable, current source of information on Agency contract services, scope and sources;
- Contract regulation, guidance, program policy issuances and guidelines are not consolidated or organized, nor readily accessible;
- Current project/contract officer training programs do not impart thorough understanding of legal/technical requirements of the position;
- Significant increases in Agency programmatic responsibility without proportionate growth in EPA resources essential for assuring effective internal controls and management oversight;
- Audit backlogs, reliance on cognizant agencies leave the Agency vulnerable to fraud, waste, abuse and impairing ability to manage;
- ESAT Superfund lab contracts are vulnerable, due to FAR definition of personal services and nature of ESAT support;
- Dual role of ERCS contract officers as OSCs creates imbalance in contract management responsibility;
- OSC warrant authorizations exceed contracting officers' warrant authorizations without comparable training; requirements;
- National TOSS Delivery Orders are not linked to regional management oversight, breaking chain of good internal

## **REGION II (Cont'd)**

controls for tracking progress and approving payment.

### **Actions Taken**

- Implementation of AA/OARM's 2/28 memo standards;
- Established ARCS on-site costs documentation review team and ARCS Management Team;
- SPO advisories issued to regional contract staff;
- Ongoing ERRD review of CH2M Hill involvement in Regional Superfund program;
- Strengthen internal controls for invoice reviews of Superfund contractor billings.

### **Other Comments**

- Further continuing review of Region II's contract management oversight may identify other areas needing attention;
- Continued lack of resources perpetuates the low priority that management issues appear to occupy within the Agency's culture;
- In the absence of budgetary relief, reform is unlikely to result in permanent change.

## **REGION III**

### **Problems Identified**

- Potential for competing job requirements vs. adjunct contract duties to affect contract management;
- Potential for EPA emphasis on delivery of programs and attaining environmental goals vs. adhering to procedures affecting contract management;
- Contract-specific training not available to staff;
- Remote management of large HQ contracts with work vested in the Regions.

### **Actions Taken**

- Currently conducting internal vulnerability review of CSC contract (projected completion mid-April 1992);
- Region will review all contractual relationships after corrective action from CSC report.

### **Other Comments**

- Resources for S&E management support have not kept pace with resource for program implementation;

- Solving contracts management problem must be matched by a resource base which is adequate for the job.

## **REGION IV**

### **Problems Identified**

- Inadequate Regional resources;
- Inadequate invoice reviews;
- Heavy reliance on CSC;
- Inadequate statements of work;
- Personal services;
- Inadequate contract administration and financial management;
- Nature of LOE contract/cost reimbursement contracts;
- FIT/site assessment vulnerability;
- Conflict of interest and limitation of future contracting;
- EPA/Contractor fraternization;
- Access to CBI/enforcement-sensitive information;
- Statement of work development;
- Program management office;
- Property in possession of contractors;
- Information security;
- Point of contact for administrative issues;
- Contract information awareness and training for staff;
- EPA's reliance on ESAT;
- Inherently governmental functions.

### **Actions Taken**

- Development of Regional Action Plans to address each area of vulnerability identified by responsible unit.

### **Other Comments**

- Regional Action Plans will serve as a beginning for permanent improvements.

## **REGION V**

### **Problems Identified**

- None identified (detailed review in progress, projected for completion by 5/8/92).

### **Actions Taken**

- Implementation of AA/OARM 2/28 memo standards;
- Development of action plan (projected for completion by 5/8/92).

### **REGION V (Cont'd)**

#### **Other Comments**

- cursory review of CSC delivery order statements of work do not reflect performance;  
of any inherent government functions or prohibited contracting activities;
- No examples of contract employees retaining sole knowledge of EPA systems or operations have surfaced.

### **REGION VI**

#### **Problems Identified**

- Physical location of contract employees;
- Decentralization of National DO for PCS data;
- Lack of FTEs to perform inherent government functions;
- Lack of guidance/training for DOPOs;
- Inadequate guidance/training on National DOs/TOSS contract/ethics and standards of conduct;
- National DO DOPO responsible for oversight of services provided in Regions.

#### **Actions Taken**

- Establishment of a Contract Management Improvement Workgroup to support Regional CM initiatives;
- Assign TOSS Coordinator role to SF CO to provide focal point for DOPO guidance/assistance;
- Development of draft CSC audit Action Plan (final due 4/3/92)
- Request A-76 guidance from PCMD;
- Regional staff supporting Superfund Zone Contracts, national ARCS Implementation Plan, Dunn Task Force, Long Term Contracting Strategy.

#### **Other Comments**

- Region is requesting a clear delegation of authority for the Senior Procurement Official.
- Region requires FTE support for a Regional Contracts Manager as specified in TOSS contract, and requests clarification from OIRM/PCMD regarding funding a position.



- Region provided common sense solutions to CSC audit findings in a February 28 memo to the ARA;
- Region responded to AA/OARM March 31 follow-up memo.

## **REGION VII**

### **Problems Identified**

- Insufficient resources allocated to properly manage contracts;
- Lack of contract management knowledge;
- Lack of contract-specific training;
- Insufficient written guidance on national contracts;
- Lack of contract file and Deliver Order (DO) documentation;
- Inadequate DO statements of work (SOW);
- Some work performed outside SOW;
- Lack of adequate invoice review on national DOs;
- Inadequate independent government cost estimates;
- Inadequate property accountability;
- Perception of personal services and conflict of interest.

### **Actions Taken**

- Implementation of AA/OARM 2/28 memo standards;
- Requiring standard contract invoices and independent government cost estimates on ARCS contracts since 1988;
- Initiation of surveillance reviews of ARCS invoices;
- Conducted review of CSC contract in August 1991;
- Conducted all-hands contract awareness training 9/91;
- Development of corrective action plan with due dates.

### **Other Comments**

- More problems exist on National than Regional contracts due to remote location of COs to POs and DOPOs.

## **REGION VIII**

### **Problems Identified**

- Supervision of contractors by EPA staff;
- Co-mingling of contractors and EPA staff;
- Contractors performing duties similar to EPA staff.

## **Actions Taken**

- Established a Contracts Management Review Task Force to complete reviews and actions plans and establish continuous improvement process for contract management;
- Implementation of AA/OARM 2/28 memo standards;
- Imposed a freeze on contract hiring;
- Published new Region VIII contract management guidelines;

## **REGION VIII (Cont'd)**

- Conducted 500 staff hours of staff training;
- Developed detailed workplans for CSC and ARCS contract audits and other vulnerable areas identified in-house;
- Proposal to reorganize the Policy and Management Division to emphasize contracts management;
- Identified vulnerabilities under FMFIA for off-site contractors and developed a corrective action plan;
- Requested HQ to ask for audit of ARCS contractors' indirect costs.

## **Other Comments**

- Actions implemented thus far have begun to change culture of contracts management in the Region.

## **REGION IX**

### **Problems Identified**

- Potential to misconstrue on-site contractors as personal service;
- Inadequately qualified on-site contractors;
- Added responsibilities of CFO Act, and increased information management/security needs require sound management practices, oversight and corresponding resources;
- Growth in program resources and responsibilities without proportionate growth in management support potentially leaves Regions vulnerable.

### **Actions Taken**

- Took immediate action to address and correct issues raised in Region's administration of CSC DOs;
- Appointment of ARA to serve as SPO;
- Formation of QAT to identify, address and prevent vulnerabilities in CM;
- Region employee appointed as CSC Contract Coordinator;
- ARA conduct of comprehensive contract management review of strengths/concerns;

- Region is addressing ARCS Task Force recommendations for workload and equipment control.

#### **Other Comments**

- Agency resources in Management PEs have not kept pace proportionately with significant growth in program PEs;

### **REGION X**

#### **Problems Identified**

- Regional culture of contractor/co-worker relationship;
- Additional training needed for task leaders;
- Statements of work inconsistent and allow too much discretion in performance;
- Lack of national and regional contract oversight resources delays decision process;
- Uncertain budget approval process;
- Adequacy of contractor management of government property;
- Possible conflict of interest with some Region X Superfund contracts;
- Lack of audit support for Superfund contracts;
- Unauthorized procurements and resulting requests for ratification of unauthorized actions.

#### **Actions Taken**

- Implementation of AA/OARM 2/28 memo standards;
- Formation of ARCS Management Team to monitor ARCS contracts;
- Team of attorneys and contract officers addressing Conflict of Interest issues;
- Examination and updating of Regional property management system (completion projected 5/31/92);
- Development of action plan to address overall problems identified and implement long-term solutions;
- Implemented new procedures to reduce unauthorized commitments.

#### **Other Comments**

- Contractors have performed effectively over the years and provided excellent value for the expenditure.



## **APPENDIX J**

### **EPA CONTRACT LEVERAGING**

#### **THE ISSUE OF OVER-DEPENDENCE**

##### **QUESTION**

Does EPA's preference for use of extramural resources over intramural resources, i.e., contract dollars versus FTEs, and our inability to effectively manage these extramural resources expose us to financial risk?

##### **INSTANCES**

One theme of this Report is that EPA is exposed to financial risk as a result of our inability to effectively manage extramural resources. Mid- and senior-level managers do not understand the fundamental importance of good contracts management to the success of the programs they manage.

##### **CAUSES**

Workload planning does not include performing an analysis of the need for extramural versus intramural resources, and EPA seldom conducts A-76 reviews to determine the relative cost effectiveness of the two options. Acquisition planning is often a pro forma exercise, and managers rarely question the reasonableness of continuing to contract out functions historically performed by contractors. EPA employees often lack the technical expertise to perform the work of the contractors or to oversee their work. The result is that contractors, in many cases, are not "niche players," fulfilling needs of an intermittent or non-recurring nature, but permanent members of the EPA work force.

The tables below demonstrate the degree to which EPA uses its appropriations to leverage authorized FTEs by contracting for professional hours. Overall, one in every three EPA "employees" is a contractor. The ratio of contractor FTEs to Federal FTEs ranges from 1 in 6 for the funds appropriated for the Inspector General, to 3 in 7 for the funds appropriated for Superfund. When we examined the ratios for information resources management reflected in the second table, EPA uses a higher percentage of its IRM budget to compensate contractor employees (i.e., 65%) than the Federal government in general (i.e., 50%). The third table demonstrates that EPA, when compared to a select group of other Federal agencies, contracts out a high percentage of its budget. Excluding the Construction Grants program from our budget, EPA obligates roughly 1 in every 3 dollars in contracts. While such an analysis is not adjusted for contract dollars used to purchase hardware (e.g., NASA) nor agencies with programs similar to Construction Grants, EPA has a high investment in contracts.

The FTE figures are a snapshot of EPA's dependence on contractors in FY 1991. They do not show the bigger picture of programs that have depended upon contractors historically for their maintenance, nor the extent to which the Agency is dependent on the same contractor or a series contractors.

**COMPARISON OF AGENCY AND CONTRACTED FTEs - FY 1991**  
(dollars in thousands)

APPROPRIATION	CONTRACT FTEs <sup>1</sup>	EPA FTEs <sup>2</sup>	FTE RATIO
Salaries & Expenses	4,331	12,406.9	.35:1
Superfund	2,699	3,459.4	.78:1
Leaking Underground Storage Tanks	34	82.5	.41:1
Federal Insecticide, Fungicide & Rodenticide Act	58	143.3	.40:1
Inspector General	58	323.2	.18:1
TOTALS	7,180	16,415.3	.44:1

**COMPARISON OF EPA AND GOVERNMENT-WIDE IRM DOLLARS**  
Information Resources Management FY 1990 Actual<sup>3</sup>  
(dollars in thousands)

	<u>Personnel Compensation</u>	<u>Commercial Services</u>	<u>Total</u>	<u>Percent Commercial</u>
EPA	\$ 39,833	\$ 159,803	\$ 262,297	65%
US Gov.	\$4,676,876	\$10,094,199	\$19,804,651	50%

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<sup>1</sup>Source: "Summary of Contracted FTEs By Appropriation (FY 1989-1993)": PCMD, January 1992.

<sup>2</sup>Source: Justification of Appropriation Estimates for Committee on Appropriations - FY 1993: EPA, OC, January 1992.

<sup>3</sup>Source: "Benchmarks of IRM Investments," Memorandum: Alvin Peschowitz to John Barker, May 8, 1992.

**COMPARISON OF EPA AND SELECTED FEDERAL AGENCY  
CONTRACT DOLLARS TO BUDGET AUTHORITY - FY 1991**  
(dollars in billions)

	<u>Budget Authority<sup>4</sup></u>	<u>Contract Dollars<sup>5</sup></u>	<u>Percent Contracts</u>
EPA <sup>6</sup>	\$ 6.0	\$ 1.153	19%
DOC	\$ 2.6	\$ 0.532	20%
HHS <sup>7</sup>	\$222.9	\$ 2.238	1%
DOI	\$ 6.9	\$ 1.733	25%
DOT	\$ 31.0	\$ 3.343	11%
NASA	\$ 14.0	\$12.012	86%

## CONCLUSION

There is nothing inherently wrong with contracting out year after year for the same activities, but the EPA's managers need to recognize that, in doing so, they risk erosion of the technical base of Agency programs; loss of corporate memory to contractors; potential COI and CBI problems; and, ultimately, potential loss of public confidence. These consequences do not follow for every program contracted out on a long term basis; however, they are dangers that must be assessed in determining how we assign Federal FTEs (i.e., to minimize our vulnerabilities), and whether EPA requests additional FTEs to assure agency integrity.

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<sup>4</sup>Source: "Budget and Program Newsletter" February 7, 1992.

<sup>5</sup>Source: "Federal Procurement Report": GSA, February 13, 1992.

<sup>6</sup>Budget authority includes Construction Grants Program (\$2.1 billion). Contract dollars as a percentage of total budget authority, excluding Construction Grants, is approximately 30 percent.

<sup>7</sup>Excludes Social Security Administration.





## **APPENDIX K**

### **CASE STUDY 1 OFFICE OF POLICY, PLANNING, AND EVALUATION**

#### **THE ISSUE OF ACCOUNTABILITY**

##### **QUESTION**

How have EPA's culture and senior management contributed to the accountability problems revealed through the OPPE example?

##### **INSTANCES**

One organization in which the systemic problems described at length in the body of the Report recently reached serious proportions between 1986 and 1989, is the Office of Policy, Planning, and Evaluation (OPPE). OPPE was criticized in a hearing before Senator David Pryor for using a contractor to prepare Congressional testimony for the confirmation hearings of one senior official. OPPE was also criticized for sending a contractor to represent EPA at an international meeting and using another contractor to help draft language on an international treaty.

An investigative report issued by OIG in July 1990 uncovered the improper and, possibly illegal, use of contractors by OPPE to circumvent Civil Service Act hiring procedures. OIG determined that as far back as 1986, and possibly earlier, a number of top management officials in OPPE were aware of, and had fostered, a disregard for the rules and regulations regarding contracting and hiring. The individuals involved admitted to using contractors as a means to hire new employees.

The common practice was to ask a contractor to subcontract with a prospective EPA employee for a few months until EPA's personnel office completed the paperwork necessary to hire the employee formally at EPA. The employees worked on EPA property, for EPA managers, and, for the most part, acted as if they were EPA employees. The employees were paid through work assignments that were specifically written to provide funding for the individuals hired. Further, many of the individuals involved admitted to OIG they filed false progress reports to reflect work that was not done; and some admitted they filed claims for hours that were not actually worked but were used to finance education and travel expenses.

In May 1991, the Agency removed all contracting authority from OPPE and placed the organization "in receivership" until an oversight group charged with putting matters back on track was satisfied that OPPE could effectively resume contract management responsibilities. This group sought to effect a shift in OPPE's organizational culture from an almost single-minded focus on technical outputs to one that values a balance of program and management objectives. However, despite the work of the oversight group and numerous reforms made within OPPE, concerns may remain in the minds of some that the Agency has not fully held accountable the

managers responsible for the irregularities and infractions that occurred. EPA has, however, held the contractors accountable. Each of the four contractors involved was required to return funds to the Agency for the work assignments used to cover salaries of prospective hires, and one contractor, American Management Systems, was suspended from all federal contracting for a short time as a result of its involvement.

While this case was referred to the Department of Justice for possible action, Agency managers and staff cited by OIG received a letter of reprimand and/or a limit on contracts management authority. They were rewarded for their contributions to EPA, despite the problems in the contracts management area, through merit pay increases, cash awards and promotions.

## **CAUSE**

The involvement of senior OPPE management at the time in these practices and the seriousness of the offenses themselves clearly indicated the extent to which OPPE perceived itself as unaccountable for contracts management and their office's readiness to compromise these responsibilities in favor of the substantive Agency mission.

## **CONCLUSION**

The message sent by these improper activities and the awards and promotions given to the participants have in some cases had an adverse effect on attempts to improve the quality of contracts management because it implied that top Agency management lacks commitment to good contracts management and to management accountability. Senior Agency officials should further evaluate this case and consider appropriate corrective action, e.g., employee orientation programs that emphasize disciplinary actions available and generally taken by the Agency in cases where employees fail to abide by law, policies and procedures.

## **CASE STUDY 2**

### **ENVIRONMENTAL RESEARCH LABORATORY -- DULUTH**

#### **QUESTION**

Have EPA personnel used the non-competitive award process provided through the Small Business Administration's (SBA) 8(a) Program to subvert effective contracts management practices?

#### **INSTANCES**

This case and analysis is based largely on information contained in the OIG Draft Report on Contracting Activities at Environmental Research Laboratory - Duluth (May 29, 1992). In 1985, an EPA employee, sole owner of a firm (ASCI Corporation) conducting a small amount of non-governmental business since 1982, applied for certification under the Small Business Administration's 8(a) Program. This certification allowed the firm to seek procurement opportunities in the federal system through a non-competitive award process. While still employed by EPA, ASCI's owner specifically requested that SBA officials contact the Laboratory concerning potential procurement opportunities. The Laboratory officials identified the need for a contract for toxicological support activities at the facility. Officials recommended approval of ASCI.

Apparent conflicts of interest existed prior to award; the CO did not review the situation, and the ethics official was not provided an opportunity for review. Laboratory officials advised the contracting specialists that OGC had approved the contract; however, no written evidence of such an approval was provided to the CO prior to award. The 8(a) firm had hired the spouses of Laboratory officials, contingent upon the firm being awarded the contract. Without adequate pre-award review of potential conflicts of interest, the Contracts Management Division in Cincinnati recommended that ASCI receive a non-competitive award of \$998,706. Another sole source award for \$5,967,698 was made on the last day of the next Fiscal Year (September 30, 1987).

Between 1986 and 1989, the Duluth Laboratory had an existing contract with a firm (UWS) to perform chemical analysis support activities. In 1989, Laboratory officials decided to seek another contract for similar work. The Laboratory official discouraged UWS from submitting a bid and requested that UWS become a subcontractor to the 8(a) firm; this in fact did occur. Even while soliciting for a new contract, Laboratory officials stated in a memorandum to the CO their decision to exercise the option year of the UWS chemical analysis support contract; a week later, they decided to cancel the UWS contract and to provide ASCI with the additional work. This reversal in EPA's decision resulted in the award of a new contract to ASCI, for the same services, at a higher cost to the government. The new amount was \$4,569,073.

In 1990, EPA awarded three additional contracts to ASCI, again through a non-competitive award process. The Laboratory separated the contracts into three segments, apparently to avoid the \$3 million threshold above which we must use competitive award procedures. EPA did not provide any other 8(a) bidders an opportunity to bid for these

contracts. In addition, the work identified for each contract was identical, thereby supporting the conclusion of a deliberate action taken by the Laboratory officials to avoid competition.

The Director of the Laboratory significantly participated in procurement actions that influenced the award to AScl. The CO did not review apparent conflict of interest issues prior to contract award.

After award to AScl, EPA tasked the contractor to perform work outside the scope of the Statement of Work, apparently to keep the contractor busy during downtime.

## **CAUSES**

The culture of EPA, i.e., a lack of concern for contracts management, fosters contractor mismanagement. The view that results were more important than regulations, no one was paying attention, and the end justifies the means appears to have been pervasive. EPA often views on-site contractors as part of its "family." Technical specialists are appointed to be contract managers but are not supported in fulfilling these responsibilities. Due to the nature of research activities, technical specialists often do not maintain appropriate "arms-length" business relationships with contractors, despite periodic training on ethics requirements governing federal employees. This culture manifests itself in actions of managers and staff, both EPA and contractors, impacting both pre-award and post-award contract activities.

In this specific case, Laboratory officials had worked with each other for some time; thus, when one manager sought to become involved in a business venture, the culture deemed it appropriate that colleagues would be of assistance to him. Vested interests on the part of the Laboratory officials influenced the award and continued use of AScl. Detailed guidance was lacking on how laboratory officials and staff were to interact with prospective and present contractors.

The use of the 8(a) contract vehicle resulted in the award to a firm well known to senior managers. It is possible that had another means been available which could have resulted in award to the same firm, the Laboratory would not have pursued the 8(a) procurement process. The SBA 8(a) Program represented more a mechanism of convenience rather than a commitment by the facility to foster the use of small and minority-owned businesses.

## **IMPLICATIONS**

Contracting requirements were jeopardized because of the desire of the Laboratory to award this contract to AScl. The use of SBA 8(a) contracts can provide the Agency with an effective contract vehicle; successful use of SBA 8(a) firms has been demonstrated throughout many EPA programs. That a contract is subject to FAR Part 19 (Small Business and disadvantaged concerns) does not exempt the award and management of the contract from other, generally applicable FAR requirements or from other, related strictures including but not limited to COI rules, CBI limits, and post-employment restrictions.

The Agency's managers and contracting specialists must exercise diligence to fulfill applicable contract requirements. The program must work with the contracting office to ensure compliance with existing requirements. EPA must take actions to ensure impartial processing of contract awards. The substantial involvement of senior managers resulting in preferential contract award may constitute a violation of EPA's ethics rules.

## **CONCLUSIONS**

The Agency cannot be assured that the AScI contracts were awarded in the best interests of the government. The credibility of the EPA contracts and the 8(a) program has been adversely affected. Agency managers should further investigate this matter and take appropriate corrective action, including disciplinary action.



## **CASE STUDY 3**

### **NATIONAL CONTRACTS PAYMENT DIVISION (NCPD)**

#### **RESPONSIBILITY AND ACCOUNTABILITY IN AWARDING CONTRACTS**

#### **QUESTION**

What were the process deficiencies surrounding the award of the Technical Support Services (TSS) contract at the National Contracts Payment Division (NCPD)?

#### **BACKGROUND**

CSC has held a contract to provide technical and operational computer system support for EPA since the early 1970's. EPA awarded CSC the Systems Operations and Software Maintenance (SOSM) contract in October, 1985 to cover a five year period of performance inclusive of options. In November, 1989, delivery order 709 required CSC to establish and operate an EPA National Contract Payment System. This operation continued under the delivery order until January 2, 1991, when the functions were assumed under the TSS Contract awarded to CSC (Contract Number 68D10003). The term of the TSS contract covered one year and three option periods, expiring in September, 1994.

Under both contracts CSC employees appear to have had access to confidential business information (CBI) as they input data from contractor invoices. In addition, CSC employees may have had access to the hard copies of invoices from every EPA contractor, including their own company. Prior to the OIG Audit of March 31, 1992, CSC staff had access to CSC invoices through the NCPD mailroom. Subsequent to the audit, this practice was revised to ensure the CSC staff did not have access to their own invoices. CSC employees also appear to have had access to CBI while scanning Superfund cost recovery data into the Superfund Cost Recovery Image Processing System (SCRIPS).

#### **EVENTS**

A review of available EPA documents indicates that contractor access to CBI was recognized and discussed within EPA on several occasions between the issuance of the initial solicitation for the TSS Contract on December 18, 1989, and the award of the TSS Contract on January 2, 1991. For example, in early May 1990 OGC identified portions of the SOWs within the TSS solicitation as inconsistent with the Agency's CBI regulations. An OGC memorandum prepared later in May concluded the only means of obtaining a business's consent to release CBI under the current regulations is by request of each affected business. OGC also telephonically confirmed that procurement related CBI may not be released without the specific consent of the originating contractor and

that publishing a notice in the Federal Register about the release of CBI was not sufficient. During a telephone conversation with PCMD, and in follow-up documentation to them, OGC stated that even if CBI was not being claimed, there must be a statement from the contractor to that effect prior to release of the information. In late May PMCD approved the RFP after assurance from the contract specialist that OGC's comments regarding CBI were properly responded to.

In early June 1990, OGC was asked to make a rule change to 40 CFR 2.209(e) to allow CSC employees access to CBI without obtaining consent of other contractors or to find an alternative solution to the CBI access problem. Also, the Director of NCPD was notified that a Federal Register Notice regarding disclosure of Privacy Act information to support contractors was necessary before the new TSS Contract could be awarded. Discussions continued between PCMD and OGC regarding the CSC CBI access question. After a mid-June meeting, PCMD chose to proceed with the rule change rather than request contractor consents which could risk non-replies or non-consents. Subsequently, PCMD sent a revised Freedom of Information Act (FOIA) regulation to OGC for approval.

CBI remained an issue during the month of July 1990. Reviews of an amendment to the TSS solicitation indicate that CBI and Privacy Act issues were of concern to OGC and that efforts to strengthen clauses regarding access and disclosure were being added as legal safeguards. Various correspondence indicates that: (1) meetings were held with NCPD, PCMD, and OGC regarding the CBI issue, (2) OGC did not concur in the proposed amendments to the FOIA regulations to allow contractor employees access to CBI as authorized Agency representatives, and (3) a decision had been made, "because of the impact on contracts all around the Agency" to continue the contract awarding process for the TSS contract.

Later in October 1990, a legal review of the latest amendment to the TSS solicitation indicated that the CBI issue had not been obviated. Another legal review in December 1990 indicated that OGC considered the contract legally sufficient except for the CBI issue. On January 2, 1991, the TSS Contract was awarded to CSC despite the CBI issues repeatedly raised by OGC.

## **CAUSES**

Diffused responsibility, authority, and accountability among: (1) the program office (OARM/RTP), (2) the contracting office (PCMD), and (3) OGC resulted in the award of the TSS contract at the NCPD without the resolution of the CBI problems.

The Agency does not systematically analyze the functions that should be contracted out as opposed to performed in-house, given such concerns as personal services, inherently governmental functions, conflict of interest, CBI, and others. Program offices take little responsibility for contracting problems. They can point to others, including, in this example, OMB because it did not "give" EPA enough in-house staff, PCMD which made the ultimate decision to award the contract, and OGC which is the "legal expert," and is accountable for the sufficiency of the final decision.

The conflict and pressures between contracts management and program mission contributed to the TSS award without resolution of the CBI problem. PCMD officials were expressly concerned about "no immediate alternative" to allowing the procurement



to proceed. They did not insist to the program office that either the contract must be substantially changed or the functions must be performed in-house. The inertia that builds up over the course of an on-going procurement contributes to this unwillingness to "say no" at a late stage.

This case study also demonstrates the inefficiencies in the Agency's legal review role in the contracts process. There exists either: (1) an unwillingness by OGC to insist on, or elevate, its legal position in the face of strong program opposition, (2) a reluctance on the part of PCMD and the program offices to listen to OGC's warnings and concerns, or (3) a combination of both. Instead of refusing to designate the contract as legally sufficient and warning higher management when it was clear that PCMD was planning to proceed with the TSS award, OGC provided vague comments concerning the CBI problem and allowed the contract award to proceed. PCMD did not explore an alternative means to resolve OGC's objections in part because a system and culture existed which allowed them to proceed as described above.

## **CONCLUSIONS**

- EPA needs accountability for contract decisions of all parties involved -- program offices, PCMD, and OGC. We must specify who has the authority and responsibility for specific aspects of the contract decision process.
- EPA must have a team approach to contract decision-making in the Agency, from pre-award through post-award, which involves all parties in the exercise of their responsibilities early in and throughout the process.
- Senior management should further evaluate this case and consider appropriate corrective action, including disciplinary action.
- OGC must be willing to elevate consideration of issues where arguably unlawful behavior is threatened. PCMD must be prepared even to terminate a long-standing and programmatically important procurement where necessary to ensure compliance with the law.



## **CASE STUDY 4**

### **PROCUREMENT AND CONTRACTS MANAGEMENT DIVISION**

#### **THE ISSUE OF ACCOUNTABILITY**

#### **QUESTION**

How has EPA's management of its procurement organization contributed to the Agency's contract management problem?

#### **BACKGROUND**

Since the early 1980's, the Procurement and Contracts Management Division (PCMD), then located within the Office of Fiscal and Contracts Management (OFCM), has reported to the Assistant Administrator for Administration (OA). In FY 1984, OA, including the PCMD and the Grants Administration Division (GAD), was assigned to report to the new Assistant Administrator for Administration and Resources Management (OARM). PCMD is one of six divisions reporting to the OA. OA is one of seven offices reporting to the AA, OARM.

#### **INSTANCES**

On the basis of information obtained through focus groups and interviews, the Standing Committee investigated vacancies, new hires and details in PCMD. While the Agency's contract management function was undergoing critical review by the OIG, the GAO and Congress, PCMD experienced a slow rate of growth, high turnover, and out-stationed critical personnel to other offices, away from their responsibilities.

While PCMD experienced rapid growth in the early 1980's, on-board employees increased from 199 to 204<sup>1</sup>, a three percent rate of growth, during the five-year period between FY 1988 and FY 1992 (as of 5/16/92). During the same period, OARM grew from 1,260 on-board employees to 1331<sup>2</sup>, a six percent rate of growth. Also during this period, hiring freezes and ceilings were applied. While PCMD observed them, other divisions appeared to have successfully lobbied internally to get around these limitations.

The rate of turnover in PCMD is consistently higher than that for OARM and has ranged from 12 to 20 percent, compared to 9 to 13 percent for OARM. The rate for GAD during the same period ranged from 9 to 18 percent<sup>3</sup>. During the first 8 months

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<sup>1</sup>Source: EPA Personnel Payroll System Data Base, May 29, 1992. Information includes Ceiling Employees On-Board, Gains, Losses by organizational unit.

<sup>2</sup>Source: Id.

<sup>3</sup>Source: Id.

of this fiscal year, 13 persons left PCMD. PCMD has hired only six employees during the same period. Based on interviews and focus groups with PCMD personnel, the level of dissatisfaction is increasing as PCMD managers redistribute the workload of previous employees, thus increasing the workload of those remaining. Managers also reported an increase in the number of requests for personnel evaluations by PCMD employees applying for jobs in other offices.

<b>FTEs AND ON-BOARD STRENGTH, FY 1989-1991<sup>4</sup></b>									
CLASSIFICATION	PCMD			OA			OARM		
	Fiscal Years			Fiscal Years			Fiscal Years		
	89	90	91	89	90	91	89	90	91
Authorized FTEs	204	203	208	405	444	455	1,218	1,309	1,366
On-Board	193	217	211	414	474	461	1,254	1,370	1,386
Hires	32	56	20	74	114	44	173	254	174
Terminations	38	32	26	82	54	57	179	138	158
Net	-6	+24	-6	-8	+60	-13	-6	+116	+16

## CAUSES

The absence of effective workload models greatly diminishes PCMD's ability to effectively vie for resources to support this critical business function. The resulting staff shortages have caused additional problems. PCMD staff's perception that its managers are willing to play by the rules (i.e., observe the freeze), and not cause complications (i.e., not to request waivers), has further reduced morale and increased turnover. As a division within OARM, PCMD was unable to compete successfully for management attention, advise of the impending crisis in contracts management, and initiate policies, guidance and management reviews to avert many of the problems contracts management faces today.

## CONCLUSIONS

OARM, OA, and PCMD management must take responsibility for its resource management decisions and their significant impact on EPA's contracts management. As stated in the Report, the Agency must hold senior managers accountable for decisions.

<sup>4</sup>Sources: Authorized Full-time Professional Equivalents (FTEs) were supplied by the OC, based on backup material to the President's Budget Request; PCMD FTEs were supplied by OA; On-board figures, hires and terminations were supplied by Human Resources Management Division, OA.

In this case, these decisions include foregoing resources sufficient to shore up contracts management; shifting personnel from policy, review and oversight functions to accomplish contract placement; authorizing the detail of key personnel in quality control, operations, and regional control and management; sacrificing strong, consistent national policy and guidance in favor of increased placement of contracts; and permitting the Agency to abandon sound management principles and risk increased waste, fraud and abuse. The Agency has a responsibility to create management information systems to inform managers, workload models to support requests for resources and a system of evaluation and rewards the reinforce good management practices and principles.



## **CASE STUDY 5**

### **WAIVER OF CONTRACT REQUIREMENTS**

#### **ISSUE OF MANAGEMENT ACCOUNTABILITY**

#### **QUESTION**

Does EPA's waiver of the personnel qualification requirements under the TOSS contract, without receiving consideration from CSC for the waiver of such requirements, indicate a lack of management accountability in the EPA acquisition process?

#### **INSTANCES**

OIG issued an audit report dated March 31, 1992 concerning EPA's management of Contract No. 68-W0-0043, Technical Operational Support Services (TOSS), CSC. The audit criticized the Agency for waiving personnel qualifications without appropriate consideration. That report largely documents the following facts. The Agency awarded the TOSS contract to CSC on September 28, 1990. The contract obligates the contractor to provide skilled personnel to support the Agency in satisfying various information management needs. The contractor is paid at fixed hourly rates for services supplied in approximately seventy different labor categories. The contract specifies personnel qualification requirements for each labor category, including educational requirements and related work experience.

Prior to contract award, the personnel qualification requirements raised concerns both within the Agency and in the contracting community. College degree requirements were of particular concern. According to the Agency's PO, he decided in late-1989 that college degrees should be required of personnel performing work in various labor categories under the contract. The PO also decided that an "equivalency clause" included in the predecessor contract, the Systems Operation and Software Maintenance Contract (SOSM), should not be included in the TOSS contract. The equivalency clause allowed the contractor to treat one year of relevant work experience as equivalent to one year of college education. For example, an individual with five years of relevant work experience, but no college degree, could qualify for a position requiring a four-year degree and one year of relevant work experience.

In December, 1989, a program official from the headquarters offices raised concerns that the combination of the requirement for a college degree and the deletion of the equivalency clause might be too inflexible. He said that the program officials would be forced to seek approval for contractor employees who did not possess the required degree. He recommended including an equivalency clause in the solicitation.

Vendors responding to the TOSS solicitation also raised the issue of an equivalency clause in questions submitted to the Agency prior to the receipt of proposals. At least three vendors, including two of the three later included in the competitive range, asked a question concerning education and experience substitutions. The CO assigned to the procurement said that she suggested that an equivalency clause be included in the

solicitation but that the PO adamantly resisted the inclusion. The PO acknowledges that he rejected any suggestion that an equivalency clause be included. Accordingly, on January 26, 1990, the CO issued Amendment No. 1 to the solicitation, which contained the Agency's answers to the vendor's questions and made it clear that work experience could not be used to fulfill education requirements. The TOSS contract, as awarded, did not provide for waiver of education or experience requirements, nor did it provide an equivalency clause.

In conversations with the PO, he said that he anticipated that some waivers would be necessary in order to keep incumbent contractor employees. He intended to allow incumbent employees to remain in their positions but expected to take a "hard line" on any requests for waivers for non-incumbents. The PO said that prior to award he had no idea that CSC would request the large number of waivers it later requested.

Best and Final Offers were received on September 7, 1990; award was made to CSC on September 28, 1990.

According to the PO, sometime after contract award, during the contract's 60-day phase-in period, the CSC Program Manager (PM) orally requested waivers for unqualified CSC employees. The PO stated that he asked the CSC PM to identify the individual employees affected and the qualification requirements they failed to meet. According to the PO, the CSC PM later provided the requested information. The PO stated that he does not now have a copy of this document and does not remember whether it included a cover letter requesting the waivers. The CO who administered the contract after award (not the same person as the pre-award CO) stated that he could not recall ever seeing a written request from the contractor for the waivers.

The CO recalled that he and the PO discussed CSC's request for waivers in January, 1991. In a memorandum dated February 11, 1991, the PO asked that the CO waive the contract's labor category qualification requirements for 165 individuals. According to the CO, he orally granted the requested waivers in March, 1991. This oral waiver has not been reduced to writing. According to the audit, the waived requirements affected approximately 16 percent of the work force supplied by CSC under the TOSS contract.

On May 21, 1992, EPA decided to revoke the waivers. Although further inquiry into the circumstances surrounding the granting of the waivers is continuing, the Agency determined that enough questions had been raised about the appropriateness of the waivers that the Agency would revoke the waivers, effective June 30, 1992.

## **CAUSES**

The circumstances surrounding the discussion of potential contract labor category problems before contract award and the subsequent granting of the waivers after award points out the lack of accountability of officials in the EPA acquisition process.

The facts indicate that both the pre-award CO and the PO recognized the potential problems that a lack of a contract labor qualification substitution clause would create. However, it appears that neither one took the necessary efforts to effectively resolve the problem. Ostensibly, the PO and CO were taking the untenable position that no contract labor qualification waivers would be granted. The PO took this position with the knowledge that the incumbent contractor required such a clause to perform work



under the predecessor contract. The facts do not indicate that either the CO or PO sought legal advice, nor do the facts indicate that management officials involved themselves effectively in the pre-award process.

The facts also indicate that both the post-award CO (different CO) and PO failed to effectively manage the waiver request made by CSC immediately after contract award. Neither demanded that CSC fully document and explain why it could not perform its contract that it had won based on technical competition. In addition, it appears that neither the CO nor PO critically reviewed CSC's request for a blanket waiver of qualifications of 165 incumbent CSC employees. The CO failed to negotiate adequate consideration prior to the waiver of contract requirements. The CO did not document his decision to waive contract requirements. The facts do not indicate that either the CO or PO sought legal advice, nor do the facts indicate that management officials involved themselves effectively in the post-award process, pointing up the abdication of important management and policy decisions by senior managers at EPA.

## **CONCLUSIONS**

EPA has allowed a situation to exist where individuals and organizations are making very significant Agency business decisions on the contracts they manage without holding them and their organizations accountable for the improper decisions they make such as in the waiver decision.

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## **CASE STUDY 6**

### **FMFIA PROCESS**

#### **QUESTION**

How did EPA's senior managers address EPA's contracts management issue in the FMFIA<sup>5</sup> process?

#### **Background**

Since 1988, EPA's Deputy Administrator and the Assistant Administrator for OARM have issued numerous FMFIA documents<sup>6</sup> requesting Agency managers to address their contracts management improvements and/or weaknesses.

For the past four years, EPA's senior managers continued to "research" EPA's contracts management issues. In May of 1992, EPA requested that OMB add procurement and contracts management to its "high risk" list. At the same time, EPA announced its intent to formally declare contracts management as a material weakness in the 1992 FMFIA Report.

#### **Brief Definition of Terms**

- **Material Weakness:** A weakness in an Agency that requires the Administrator to bring it to the attention of the President and Congress annually. Within the Agency, managers track quarterly and report to the Senior Council as necessary.
- **High Risk Area:** A weakness that may make up a series of issues or reflects a single material weakness, requiring the Agency to identify resources in the Agency's budget and report progress to OMB twice a year.
- **Other Area of Concern:** An issue that the Agency wants to highlight to the President and Congress yet is not able to declare a material weakness or recommend as a high risk area. The Senior Council discusses this during the year to determine how the Agency will handle the matter.

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<sup>5</sup>The Federal Managers' Financial Integrity Act is an important tool available to evaluate the management health of government agencies.

<sup>6</sup>EPA's Guidance for Preparing FMFIA Report, EPA's Internal Decisions and Presentations, OMB's High Risk Lists, and EPA's Annual FMFIA Reports to the President and Congress.

## INSTANCES

Prior to the establishment of EPA's Senior Council on Management Controls, the Office of the Comptroller, Resource Management Division had to go "hat in hand" urging EPA's senior managers to declare material weaknesses. Interviews with EPA senior managers revealed that the FMFIA process is a "negative award" structure and that the FMFIA process inherently proved a "punishment for raising your hand".

During the 1988 and 1989 FMFIA decision making process, the RMD proposed that EPA's senior management consider reporting contracts management as a material weakness in EPA's FMFIA Report. In both years, the AA for OARM believed if OARM alone reported contracts management, the problem would be perceived as a PCMD issue, rather than the Agency-wide systemic and pervasive weakness that it is.<sup>7</sup>

In July 1989, OMB Director Richard C. Darman required EPA's Deputy Administrator to perform a quick assessment of EPA's highest priority issues and most vulnerable areas. As a result of the assessment, EPA's AA for OARM informed OMB that contracts management and property management were major areas of concern. Deliberations between EPA and OMB began on these areas in September. Although EPA provided more information to OMB on the contract issue in October, OMB dropped it from its initial list of high risk areas. The AA for OARM chose to elevate this issue once again in EPA's 1989 FMFIA Report as an area that EPA would continue to review.

At the end of 1989, the Deputy Administrator established EPA's Senior Council on Management Controls<sup>8</sup>. The Council's purpose is to (1) keep EPA's senior managers alert to potential problems identified by the Agency's OIG, the GAO, and concerns of OMB; (2) provide overall management control and audit management strategy and guidance; and (3) involve senior management in significant management integrity issues.

During August 1990, GAO informed the Senior Council that Superfund Contracts Management was highly vulnerable to fraud, waste and abuse. EPA's Associate Director for Superfund and RCRA Procurement Operations, PCMD, presented a Contracts Management Update to EPA's Senior Council on Management Controls. This prompted the Deputy Administrator, in September, to request EPA's senior managers to address contracts management concerns in the upcoming FMFIA letters. EPA's senior managers addressed several areas of concern related to contracts management in their 1990 FMFIA Reports.<sup>9</sup> During the November meeting of the Senior Council, the Council decided not to address these issues as a material weakness, but as other areas of concern

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<sup>7</sup>Several EPA Senior Managers have suggested that contracts management was not made a FMFIA issue because of lack of willingness to share responsibility across AA-ships. They suggest that FMFIA doesn't lend itself to Agency-wide issues, but is inherently a program-by-program device.

<sup>8</sup>The Deputy Administrator chairs the Council, which meets at least four times a year. Since its inception, the Deputy Administrator has attended every meeting of the Senior Council.

<sup>9</sup>These issues included Inherently Governmental Functions, Advisory and Assistance Contracts, Award Fee Contracts, Conflict of Interest, and Financial Administrative Contracting Officers and Financial Monitoring Reviews.

in EPA's 1990 FMFIA Report. However, EPA did declare ORD's management of extramural resources as a material weakness. Additionally, EPA also reported potential problems with EPA's Contract Laboratory Program as a potential future issue.

During 1991, the Senior Council discussed EPA's contracts management issues at the June, September and November meetings. Because EPA declared several areas of concern in the contracts management arena, the Deputy Administrator requested that OARM develop an Integrated Contract Management Strategy. OARM developed the strategy and continued to report on its progress during 1991. At the same time, EPA's OARM/RTP senior manager led a review of EPA's Contract Laboratory Program as promised in the FMFIA letter. In September, GAO participated in the meeting of the Senior Council and suggested EPA declare contracts management at large a material weakness in its 1991 letter.

During the November 1991 decision making meeting of EPA's Senior Council on Management Controls, attendees<sup>10</sup> decided not to declare contracts management as a material weakness. The consensus was to see the results of the integrated contracts management strategy before declaring contracts management in general as a material weakness.

Based on the progress of the strategy and the declaration of three contract-related material weaknesses<sup>11</sup>, EPA's Senior Council on Management Controls once again postponed declaring contracts management as a material weakness for another year. However, as before, EPA declared several procurement-related issues as areas receiving particular management attention by EPA in its 1991 FMFIA Report.<sup>12</sup>

As a result of the Congressional interest in EPA's contracts management practices, EPA's Senior Council on Management Controls held a meeting in April of 1992. At that time, the Council decided to declare contracts management as a high risk issue and the AA for OARM requested OMB to add it to their list. Additionally, the AA for OARM committed to OMB that EPA would declare contracts management as a material weakness in its 1992 FMFIA Report.

## **CAUSE**

The Agency is reluctant to declare a weakness until it has been formally reviewed by either OIG or a management team. The FMFIA process is viewed as a "negative" award system and "punishes" people for raising their hand. Also, the Agency may be reluctant to identify major problems where there is no one "owner" of the weakness. Agency managers, who focus primarily on program products, do not deal effectively with

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<sup>10</sup>The attendees included the Deputy Administrator, Assistant and Regional Administrators or their representatives, the General Counsel and the Inspector General.

<sup>11</sup>These material weaknesses are: Accelerated Remedial Cleanup, ARCS Contracts Management, ORD's management of extramural resources, and the Contract Laboratory Program.

<sup>12</sup>These issues were: Superfund Operations Reorganization, Contract Management Improvements, Conflict of Interest, Contract Property, and Centralized Contract Management and Administration Efforts.

programs and functions that cut across Agency organizational lines (e.g., contracts management and FMFIA).

## **CONCLUSION**

EPA senior-level managers need to declare major weaknesses or concerns as material weaknesses and then develop the appropriate paperwork, not vice-versa. In developing categories such as "other areas of concern" or "potential future issues", EPA's senior management may simply be prolonging the identification of weaknesses as material. Not being able to have one owner of the issue does not negate the Administrator's responsibilities to declare major problems to the President and the Congress in EPA's FMFIA Report. The Agency must design systems and ensure a culture in which the senior management team deals effectively with cross-cutting issues.

## **HOW SOME OTHER FEDERAL AGENCIES ADDRESSED CONTRACT ISSUES IN 1991 FMFIA REPORTS**

### **National Aeronautics and Space Administration:**

High Risk Area:	Procurement and Contracts Management
Material Weakness:	Inadequate Institutional Funding
Material Weakness:	Procurement - Contract and Subcontract Management Oversight

### **Department of Health and Human Services:**

Material Weakness:	Administration of Procurement and Contracts over \$25 thousand
Material Weakness:	NIH Procurement System

### **Department of Defense:**

Material Weakness:	Inappropriate Offloading of Contract Requirements
Material Weakness:	Delinquency in Processing Contract Reports
Material Weakness:	Task Order Contracting
Material Weakness:	Contracting via Interagency Agreements

### **Department of Justice:**

High Risk and Material Weakness:	Career Management and Contracting Officer Standards Program
Material Weakness:	Procurement Process in DEA and Field Divisions
Material Weakness:	Procurement Improvement in Immigration and Naturalization Service

## **CASE STUDY 7**

### **EPA AND ITS CONTRACTORS - TQM**

#### **QUESTION**

What are the practical and financial implications of EPA involving its contractors' efforts to continually improve Agency processes and procedures?

#### **INSTANCES**

The recent ARCS Study recommended that EPA improve communications with its contractors using Region V's Total Quality Management (TQM) example. Some offices and Regions question this recommendation in light of recent OIG audits criticizing EPA for not maintaining "arms-length" relationships with contractors.

Region V invited its seven ARCS firms to participate in a series of meetings to discuss ARCS program implementation; six firms accepted. The Region conducted an initial training session to educate contractor and EPA personnel alike on TQM principles. Participants later engaged in a brainstorming session to identify issues impacting effective ARCS contract management. Using written voting, priority issues were identified; specific notation was made whether the respective rankings were from the contractor or EPA. Discussions then focused on three priority issues (Pre-Qualification Standards; Delays in Work Plan Approvals; and Involvement of State Agencies). Participants met again to review the action status.

Feedback from the contractors was positive. EPA managers were also pleased; many of the issues identified by the contractors had been previously earmarked by Region V for action.

Region III also initiated a TQM session with its five ARCS firms. Participants identified 69 issues impacting ARCS; TQM voting narrowed these to eight priority areas (More Defined Statements of Work; Ineffective RPM Management of Work Assignments; Adversarial Relationships between EPA and the Contractors; Scoping Meetings; Lack of Communication; Roles and Responsibilities of Contractors and EPA; Award Fee Process; and Lack of Commitment from Senior EPA Managers on Contracts). Further discussion centered on how these issues impact Superfund's initiative to clean up sites "cheaper, faster and better."

The Department of Defense has had extensive experience in using TQM in meetings with its contractors. DOD officials praise these discussions very highly ("DOD has moved from a spirit of open hostility with firms to one of frank communications.") DOD's experience arose from its need to ensure that management officials, both within the organization and the contracting community, understood new DOD program directions.

DOD formalized this approach through a program entitled "In Plan Quality Evaluation Programs" (IQUE). DOD uses "Process Action Teams," consisting of DOD and contractor representatives, to develop quality assurance approaches to the Department's inspection and process monitoring activities.

## **CAUSES**

There exists a strong difference of belief in the Agency culture which views contractor support in two different lights. On the one hand, contractors are seen as being an essential part of the EPA mission; this approach significantly impacts the "arms-length" relationship cited in the OIG reports. In fact, at times the contractor is often seen as a part of the EPA family and its employees are treated as if they were federal employees. On the other, EPA views contractors with suspicion, questioning whether the interests of Agency contractors are truly in line with the goals of the Agency. The two views are seen as mutually exclusive. The true relationship, with a focus on problem solving and enforcing contractual rights tempered by the rule of reason, is a business one in which the standard should be open and honest dealings.

Both approaches are restrictive in their perspective. EPA is a highly contractor-leveraged agency; therefore, we are reliant on contractor support. In turn, the Agency is charged with managing these contracts in such a manner as to ensure program integrity and objectivity. In order to ensure the proper balance between contracts management and program delivery, it is essential that all parties understand the parameters within which these contracts must be administered.

## **IMPLICATIONS**

TQM principles are being used extensively throughout the private and public sector to improve communication levels and expand service delivery within organizations. EPA is committed to changing its management culture; TQM is an approach through which changes can be made that substantially benefit the Agency.

There is some concern about the appropriate means to reimburse contractors for their participation in these "extraordinary" meetings. There are three options which can meet this concern: (1) EPA can reimburse the firms through the separate Program Management fees (already negotiated in some contracts); this was the method followed in Regions III and V; (2) EPA can use a separate Work Assignment, with a Statement of Work identifying specific tasks and allowable charges for the firms to participate in these sessions; DOD uses this method with the tasks being identified as the development of a report based on specified DOD/Contractor IQUE meetings; or (3) the firms shall consider costs for these sessions to be part of their indirect rates and thus, not directly billable to the Agency. [Since EPA is now negotiating contracts without separate Program Management fees and since the contractor is receiving information which can benefit it company-wide as opposed to any site-specific benefit, the third option seems to be the most reasonable.]

Initial discussions with contractors may be difficult as EPA and the contractors attempt to attain a "comfortable" environment within which to have frank and open discussion. However, based on examples in EPA and other private and public sector organizations, the tension is reduced quickly as TQM principles are applied.

Throughout this networking approach, EPA will need to make certain that it does not appear to relinquish its final decision-making authority. Vigilance will be maintained in order to avoid the perception that contractors are exercising an undue influence over EPA in matters of policy. There will be instances and processes where it is not



appropriate for contractor participation in TQM sessions (e.g., processes and procedures to improve project management). In addition, such participation will be limited to post-award consultations.

## **CONCLUSION**

TQM principles have proved to be effective tools in improving organizational responsiveness, bringing together divergent perspectives in addressing mutually designated priority issues. As a dynamic organization, EPA must recognize the positive aspects of discussions with contractors involved in Agency programs.

Open and frank discussions, following TQM principles, can reduce the distrust found in the culture of the Agency, reinforce the proper balance essential to effective contracts management, and result in process and program improvements.



## **APPENDIX L**

### **A CHECKLIST FOR MANAGING CONTRACTS IN FURTHERANCE OF THE AGENCY'S MISSION**

#### **BACKGROUND**

As suggested by the schedules that accompany them, many recommendations of the Report cannot be implemented overnight. Training takes time, as does reorganization and, certainly, changes in Agency culture. What can senior Agency leaders do to move immediately toward better contracts management?

#### **BRIEF ANSWER**

Senior managers, Assistant Administrators and the like, can take steps that will improve contracts management immediately and support the recommendations set out in the Report as they are implemented. Indeed the Agency's leaders may well need to take these steps if the rest of the Agency is to follow.

To encourage and aid this necessary managerial initiative, what follows is a rough-and-ready, contracts management checklist that senior Agency managers could begin to use immediately. The checklist includes contract-related issues that should be kept in mind when making any management decision, types of information a manager should have in hand regarding contracts that could be or are used in support of activities under that manager's control, and questions to be raised on a regular basis with immediate subordinates and the senior manager's contracts counterparts.

#### **QUESTIONS/CHECKLIST**

- A) To what extent do various components of the Office or AA-ship depend upon contractors for getting its work done?
  - 1) Of all monies expended by or on behalf of the Office in the course of a year, what percentage of those monies is paid directly to contractors?
  - 2) What percentage of monies paid to contractors on behalf of the Office is disbursed under any form of cost-reimbursement contract?
  - 3) What is growing at a faster rate from year to year, monies expended on behalf of the Office for activities performed in-house, or monies expended on behalf of the Office for activities performed by contractors?
  - 4) Regardless of source, how many person years of effort are expended in furthering the Office's tasks over the course of a year?  
What percentage of those person years is supplied by government employees? By contract labor?
  - 5) For the most important and time-sensitive activities that the Office contracts out, could we perform them on our own if we had to, and for

how long could we do so without getting additional help either in the form of a new contractor or added, in-house resources?

- 6) If it became expedient or necessary to take over an activity presently performed for the Office under contract, do we have control over the hardware, systems documentation, instructions, protocols, and other information our own people would need to perform the task in question?
- B) In supporting any allocation of resources, regardless of whether the allocation is an increase, have we considered whether contracts management personnel would be needed to oversee our proposed resource allocation?
- C) Are we familiar with the key findings and recommendations of the most recent audits and evaluations regarding Agency activities performed under contract?
- D) Are we checking this Office's operations whenever an IG or GAO audit has identified shortcomings in the analogous operations of another component of the Agency?
- E) What is the nature and frequency of meetings between each of our Office's program staffs and their contracts management counterparts?
- F) Do those staff meetings -- as well as periodic, follow-up meetings by relevant managers -- result in planning and exchange of information on at least the following topics:
  - each staff's internal goals, performance, and progress;
  - oversight of Agency contractors serving the program;
  - identification of anticipated requirements that will have to be satisfied by contractual procurement;
  - identification of activities that could be moved to more competitive contract types as the current contracts for those goods or services expire. For example, some activities presently performed under a cost reimbursement contract might in future be contracted out under a fixed, firm price contract.
- G) Do we see any evidence of our attempting to use or secure contract resources as a means of coping with limits placed on the Agency's or Office's budget relating to number of in-house employees or other budget and/or cost classifications? (Put another way, would we and/or our managers, for reasons such as cost-efficiency or maintaining Agency expertise, prefer to accomplish a task in-house rather than under contract but find the option foreclosed owing to a shortage of in-house resources, such as FTEs?)
- H) What are we doing to make clear that no matter how hard we push, as we should, to accomplish as much of the Office's mission as expeditiously as possible, we do not ever mean to encourage or permit -- explicitly, implicitly, or inadvertently -- lower level personnel to sacrifice the requirements of contracts management or other rules of law in deference to a programmatic objective?
- I) How are we securing systematic, efficient, oversight by mid- and higher-level managers to ensure that the Office receives all the support it should under

contracts but does so while staying clear of classic contractual missteps, including:

- 1) Performance of personal services, directed by us or acquiesced in by the contractors (are we overseeing the contractor or treating him as our own employee);
  - 2) Ceding of inherent governmental functions to contractors;
  - 3) Losing Agency expertise or discretion needed to exercise the Agency's governmental functions;
  - 4) Losing in-house expertise needed to assign and oversee the technical undertakings of the contractor;
  - 5) Creating conflicts of interest owing to past employment relations, other clients of an Agency contractor, or other work being done by a contractor for the Agency.
- J) Are personnel from our Office participating in all evaluations performed by the Agency to assess the performance of contractors from whom we receive goods or services?
- K) Are we taking steps to ensure that our representatives on such review panels receive adequate information about the quality of that contractor's performance for our Office, so that the representative can -- and understands he should -- evaluate the contractor based on the actual performance under the contract?
- L) What steps should we take to ensure the Office's timely compliance with current training, guidance, and other applicable requirements.