



# Office of Inspector General

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## Special Report

### **THE NATIONAL ENFORCEMENT INVESTIGATIONS CENTER COULD IMPROVE LITIGATION SUPPORT SERVICES ADMINISTRATION**

**E1SFG6-08-0024-7400004**

**October 29, 1996**

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**Inspector General Division  
Conducting the Audit:**

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Kansas City, Kansas**

**Program Offices Involved:**

**National Enforcement  
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October 29, 1996

MEMORANDUM

**SUBJECT:** The National Enforcement  
Investigations Center Could Improve  
Litigation Support Services Administration  
Report Number E1SFG6-08-0024-7400004

**FROM:** Bennie S. Salem *Bennie Salem*  
Divisional Inspector General  
for Audit

**TO:** Dianna Love  
Director, National Enforcement Investigations Center

We have completed our survey of the National Enforcement Investigations Center's (NEIC) litigation support services. Although NEIC's administration of litigation support services was generally good, NEIC had not fully documented its decision to use the Department of Justice Interagency Agreement. NEIC should periodically assess the need for a contractor representative in each region, prepare independent Government estimates apart from contractor input, and ensure the Department of Justice's contractor is not unnecessarily paying taxes on procured goods.

ACTION REQUIRED

In accordance with Environmental Protection Agency (EPA) Order 2750, you, as the action official, are required to provide us a written response to this special report within 90 days. For corrective actions planned but not yet completed by the response date, reference to specific milestone dates will assist us in deciding whether to close this report.

This special report contains findings that describe problems the Office of Inspector General (OIG) has identified. The special report represents the opinion of OIG. Final determinations on matters in this special report will be made by EPA managers in accordance with established EPA audit resolution procedures. Accordingly, the findings described in this special report do not necessarily represent the final EPA position.

We have no objections to the release of this report to the public. Thank you for the courtesy and assistance that you and your staff provided our auditors. Should you or your staff have any questions, please contact me at (913) 551-7831 or Jeff Hart, Audit Manager in our Denver office, at (303) 312-6872.

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## EXECUTIVE SUMMARY

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### BACKGROUND

The National Enforcement Investigations Center (NEIC) provides enforcement and investigative support services for complex and nationally significant enforcement and investigative cases. As part of its mission, NEIC obtains litigation support for the Environmental Protection Agency (EPA) through an Interagency Agreement (IAG) with the Department of Justice (Justice). NEIC had about 130 staff in fiscal 1995 and operated on a budget of \$16.5 million. NEIC was recently placed under the Office of Enforcement and Compliance's Office of Criminal Enforcement, Forensics, and Training. Our general survey objective was to assess the adequacy of NEIC's overall management of litigation support services.

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### WE FOUND THAT

Although the Director did not sign the fiscal 1995 Federal Managers' Financial Integrity Act assurance letter, NEIC's administration of litigation support services was generally good. Its case managers were actively involved in the management and performance of work assignments and maintained project files. However, NEIC did not fully document its decision and rationale for using an IAG and did not prepare independent Government estimates apart from contractor input. It should continue to assess the need for contractor personnel in each EPA region. Finally, NEIC may have unnecessarily paid taxes on goods purchased by the Justice contractor.

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### WE RECOMMENDED THAT

The NEIC Director should fully document the decision and cost effectiveness for using an IAG and show how it was in the best interest of the Government. The Director should require case managers to develop independent Government estimates apart from contractor input. The Director should continue to evaluate the cost effectiveness of having a contractor employee in each region and have Justice adjust staffing levels where appropriate. Also, the Director should ensure that Justice's contracting officer has provided tax exemption certificates to the contractor.

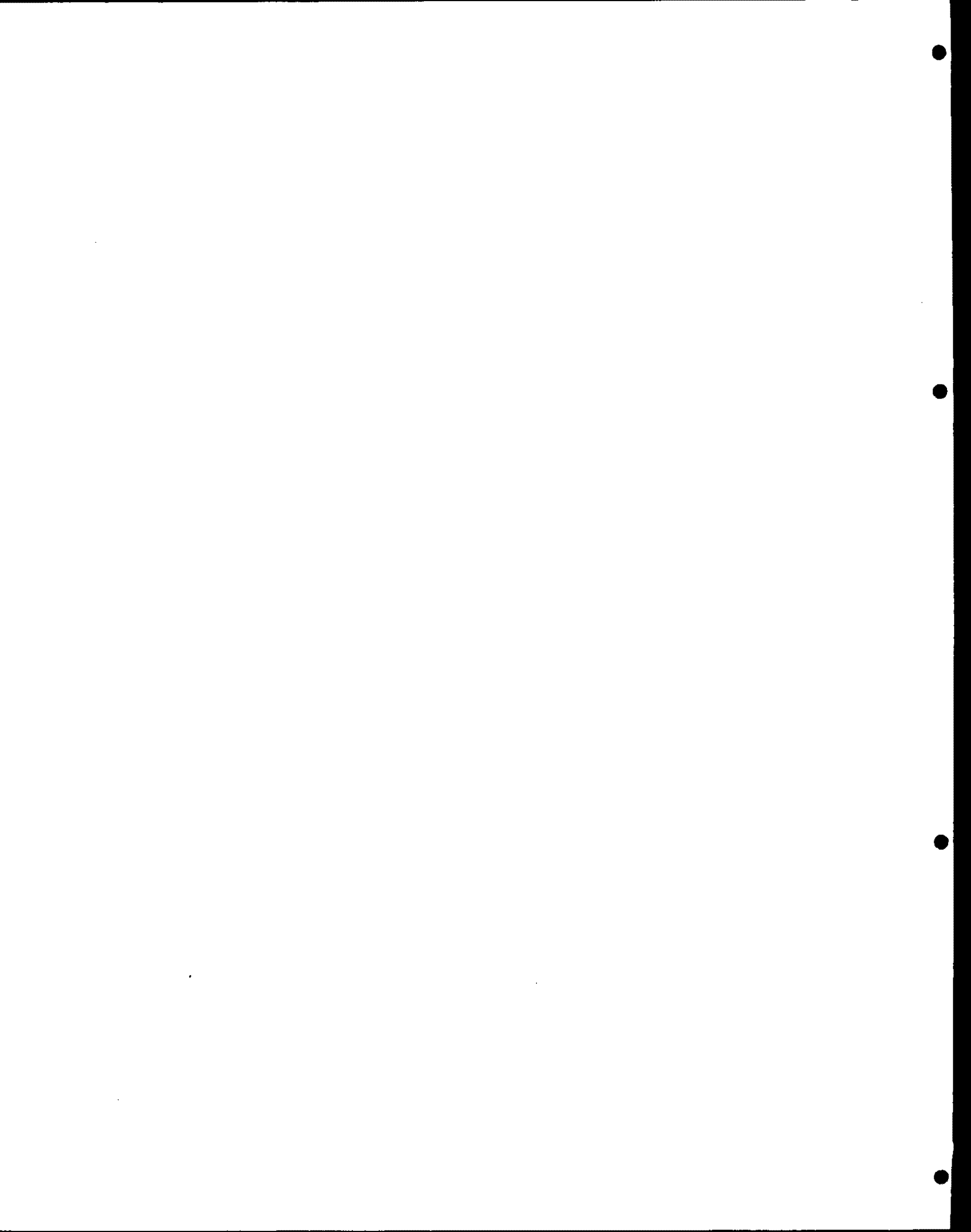
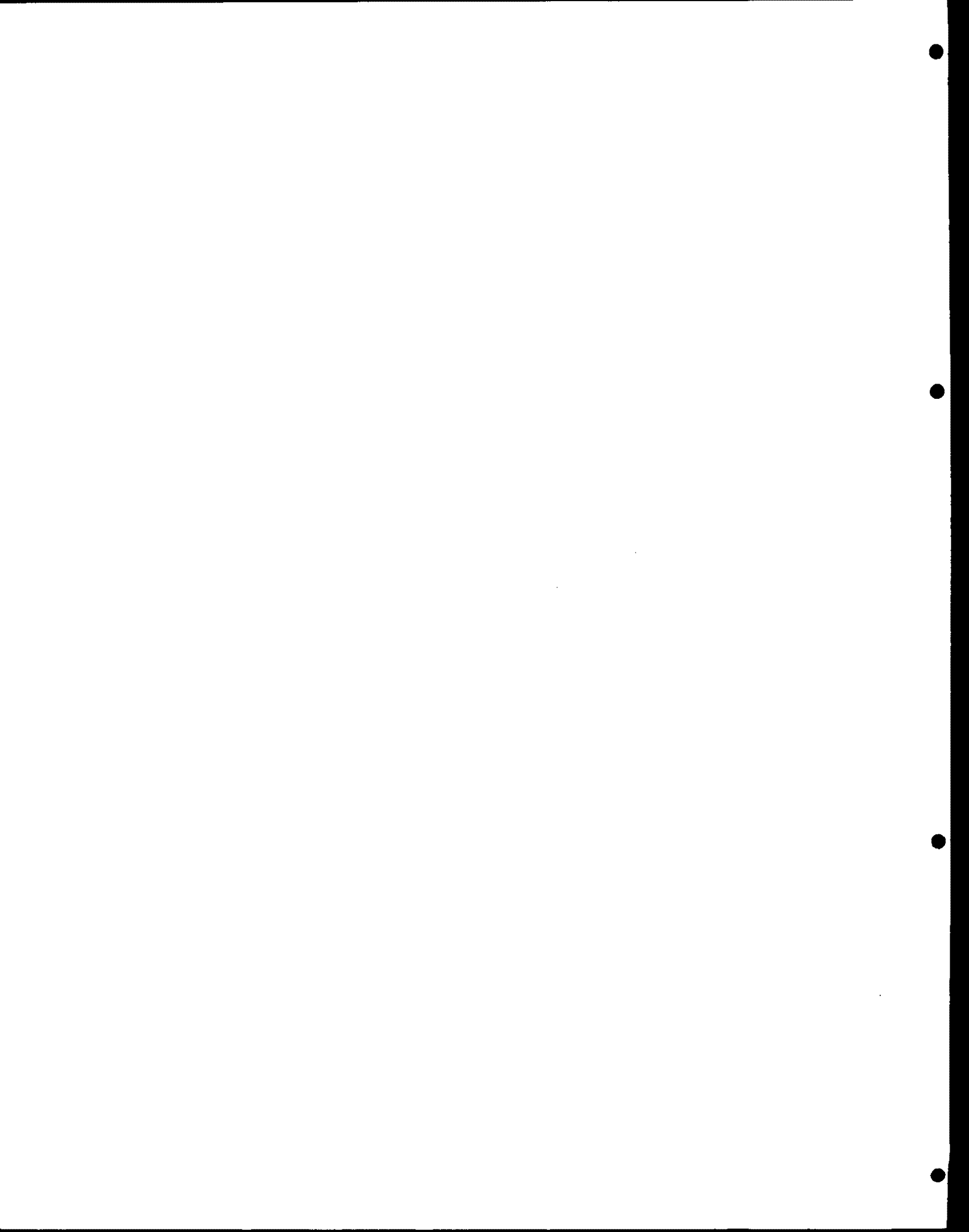


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## PURPOSE

Our general survey objectives were to understand the National Enforcement Investigations Center's (NEIC) mission and its role in providing litigation support services. Our specific objectives were to assess the adequacy of litigation support services contract administration, determine the reasonableness of litigation support costs, and assess the impact of litigation support services provided by other Environmental Protection Agency (EPA) contracts.

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## BACKGROUND

NEIC provides enforcement and investigative support services under the supervision of the Office of Criminal Enforcement, Forensics, and Training, a division of the Office of Enforcement and Compliance Assurance (OECA). It provides technical expertise for field investigations, technical and regulatory analysis, forensic laboratory analysis, information services (including facility profiles, corporate compliance assessments, and Superfund financial assessments), and litigation support services. Litigation support services include organizing documents, creating document management systems, labeling documents, and performing transactional history analyses.

NEIC obtains litigation support services through a Department of Justice (Justice) Interagency Agreement (IAG). The IAG provides NEIC access to Justice's contractor staff. Twenty contractor staff work exclusively on EPA litigation support cases. Ten contractor employees are located at the Denver Federal Center in Lakewood, Colorado, and 1 employee is located in each of EPA's 10 regional offices. All work assignments and contract changes are issued by Justice's contracting officer (CO).

NEIC's fiscal 1995 budget included 130 staff and \$16.5 million. Its work supported all areas of EPA programs. NEIC conducted much of its work through the use of contractors and IAGs that allowed it to use other agencies' contractors. NEIC's litigation support service contract obligations for fiscal 1994 totaled about \$5.5 million; fiscal 1995 totaled just over \$1 million. Much of the decline can be attributed to the replacement of NEIC's previous contractor with the Justice IAG and a reduction in services provided.

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SCOPE AND  
METHODOLOGY

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We performed survey work at NEIC in Lakewood, Colorado; Region 8 in Denver, Colorado; Region 7 in Kansas City, Kansas; and OECA and the Office of Acquisition Management (OAM) within the Office of Administration and Resources Management in Washington, D.C., from February 1996 through August 1996.

To assess the adequacy of litigation support services administration, we interviewed NEIC's project officer and case managers. We interviewed work assignment managers (WAM) and the Justice contractor's employees in Regions 7 and 8 and at NEIC. We interviewed OECA and OAM contracting officials in Washington to discuss the services obtained under the Justice IAG. To test internal controls, we reviewed NEIC litigation support project files, NEIC's project tracking system, and case files. We also reviewed contractor time charges to determine the amount of administrative time the contractor charged to NEIC. We reviewed management system documentation for NEIC's new organization.

To determine the cost reasonableness of litigation support services, we met with other potential customers of litigation support services and compared the cost of services provided by NEIC to the cost of similar services provided through other contracts.

To identify other sources of litigation support services, we sent a questionnaire to EPA regional offices. We were unable to fully assess the relationship of other litigation support vehicles to that of the NEIC IAG.

We designed our survey to identify potential weaknesses in NEIC's litigation support services program. Our survey was more limited in scope than an audit and, as such, did not necessarily comply with all Government Auditing Standards. We performed our review in accordance with the provisions of Office of Inspector General (OIG) Manual Chapter 150, *Reports of Review*. Other than the issues discussed below, no other significant issues came to our attention that warranted expanding the scope of our review.

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PRIOR AUDIT  
COVERAGE

A March 1995 OIG audit report, *Interagency Agreements: Off-Loading at EPA Headquarters*, reported that EPA had not adequately considered costs in determining when to use Economy Act IAGs rather than its own procurement process. The audit found that cost comparisons would ensure that program offices focus on cost reasonableness, not just convenience. The use of IAGs in lieu of contracts would result in the loss to EPA of the benefits of its own competition. Justifications based solely on convenience would not be able to stand up to congressional or public scrutiny. Without obtaining cost reasonableness information prior to executing IAGs, EPA could not demonstrate that it had spent its limited resources in the most economical way possible.

A September 1995, OIG audit report, *EPA's Acquisition of Analytical Support*, reported EPA had not planned an overall analytical support services contracting strategy. Federal Acquisition Regulations require agencies to perform advance planning to develop item descriptions and performance requirements, conduct market research, and consider Government versus contractor performance when planning major acquisitions. The audit found EPA did not sufficiently evaluate its acquisition history to define its requirements. The report stated that analysis of EPA uses of analytical services should provide a better base for decisions and allow EPA to obtain products and services fairly and economically.

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RESULTS OF REVIEW

NEIC's Administration of  
Litigation Support Services  
Was Generally Good

NEIC's administration of litigation support services was generally good. NEIC case managers were actively involved in the management of work assignments. Case managers worked with regional WAMs from the initiation of a project. They helped define work tasks and ensure tasks were appropriate for inclusion under the Justice IAG. They reviewed cost estimates, worked with the requestor to ensure they were satisfied with the cost of the service to be performed, and negotiated a cost that was acceptable to NEIC and the contractor.

NEIC case managers were also very involved in the performance of each work assignment. They monitored progress through weekly status reports and periodic discussions with WAMs and contractor representatives. They also monitored project cost and

compared expenditures to work progress to determine if the work would be completed within estimated costs. Case managers worked with the Justice CO technical representative to increase or decrease work assignment budgets as appropriate.

Case managers maintained project files. Prior to February 1, 1996, file contents were inconsistent. However, NEIC recently published *Litigation Information Technology Support (LITS) Project Documentation Guidelines*, dated October 1995, that, if followed, should improve file contents. For example, some files generated prior to February 1, 1996, the effective date of the guidelines, did not contain project closeout letters. The guidelines defined the purpose, audience, and contents for both administrative and system documentation requirements. Beginning February 1, 1996, the guidelines required that the contractor write a project closeout letter 30 days after project completion. The closeout letter certifies that all work assignment tasks were completed and become part of NEIC's cost recovery documentation.

According to the Federal Managers' Financial Integrity Act (FMFIA) coordinator, NEIC completed 19 of the 25 internal control reviews it planned for fiscal 1995. Reviews conducted in fiscal 1995 included a management systems review, imprest fund audits, property inventory, and internal timekeeping procedures review. In addition, NEIC staff reviewed EPA-wide weaknesses to determine if any applied to NEIC.

Because NEIC's director was new and not yet familiar with NEIC's operation, she did not sign NEIC's fiscal 1995 FMFIA assurance letter. The director sent a memorandum to the Assistant Administrator, OECA, explaining that she had only become the director on September 3, 1995, and was in the process of taking steps to "...*evaluate and insure that our internal control policies are in place...*" Because OECA reorganized on October 1, 1995 (fiscal 1996), NEIC's annual FMFIA assurance letter is no longer the responsibility of the NEIC director. Beginning in fiscal 1996, the Office of Criminal Enforcement, Forensics, and Training is responsible for NEIC's annual assurance. Office of Criminal Enforcement, Forensics, and Training representatives have completed their mid-year review for FMFIA and will include NEIC in their annual report to OECA.

NEIC Did Not Fully Document Its Rationale for the Justice IAG

NEIC did not fully document its decision and rationale for using an IAG to obtain litigation support services, its basis for determining that the IAG was in the best interest of the Government, or its evaluation of cost reasonableness. NEIC did not maintain an IAG file that contained all the pertinent information about its decision to enter into an IAG. According to EPA's *Interagency Agreement Policy and Procedures Compendium*, dated September 1988, a working file would typically contain records of discussion, a list of potential sources, the decision memorandum, commitment notices, the signed agreement, transmittal letters, and other important documents. The decision memorandum should summarize how the proposed IAG is consistent with EPA's mission, discuss alternatives that NEIC considered, and explain why it selected the IAG. In addition, procurement under Economy Act IAGs should be based on fair and reasonable prices for the required work, not just convenience. In this case, NEIC's IAG file should have contained full documentation of its evaluation of the Justice IAG cost. This evaluation should have included a cost comparison of the Justice IAG with the cost of issuing a new contract and the cost and feasibility of using existing EPA contracts.

NEIC representatives told us that they conducted lengthy discussions, presented the results of their discussions to management, and analyzed other options regarding the pros and cons of contracting directly versus using an IAG. Discussions revolved around the following points:

- Justice invited NEIC to buy into an existing contract giving NEIC access to three contractors and ease of technology application transfers;
- the Justice contract provided access to 100 contractor temporaries for immediate large scale support;
- NEIC reduced its contracting staff levels and the IAG avoided EPA's 32-point, 18-month contract award process; and
- NEIC discontinued its onsite laboratory audit program that had been run by NEIC's previous contractor.

NEIC representatives noted that they believed using the IAG was easier and administratively less costly than using EPA's contracting process. They also noted that a significant number of NEIC's litigation support products (such as databases) were passed on to Justice for litigation and that using Justice's contractor made case transition easier, resulting in additional savings for the Government's overall case development. NEIC's project officer and case managers told us that they were more satisfied with the services provided under the IAG than those provided under the previous contract for litigation support services.

NEIC case managers also discussed the cost implications of an IAG but were unaware of the need to initially provide a decision memorandum fully documenting their cost evaluation. NEIC representatives were unable to locate anyone at EPA to help ensure they entered into the IAG properly or to locate IAG training. NEIC did document the rationale for its decision in its fiscal 1996 IAG funding document but has not yet analyzed, compared, and documented the IAG cost with that of alternatives.

NEIC representatives did not fully analyze and document the cost advantage of using the Justice IAG rather than contracting for services or using existing EPA contracts. They discussed the administrative cost of different options and believed that the IAG was administratively less burdensome and less costly. They told us that conducting a meaningful cost comparison would have been difficult during their initial decision process because they did not have historical information to evaluate the Justice contractor. They now intend to perform a cost analysis and noted that it should be useful in deciding whether or not to renew the IAG with Justice, contract for services themselves, or use some other vehicle to obtain litigation support services. Fully documenting their decision will help confirm that the decision was also based on efficiency and permit future decisionmakers to benefit from the results of NEIC's analysis.

Finally, NEIC may not be satisfying all of the stated purposes in the IAG. One of the purposes of EPA's IAG with Justice was to:

...use resources effectively; avoiding the potential duplication of effort incurred with multiple

contracts and management employing the concept of fixed price, whenever possible.

The Justice IAG does, to some degree, duplicate services available in other EPA contracts. For example, the Superfund program used Environmental Service Support contracts, the Resource Conservation and Recovery Act program used its own contracts, and some regions used 8(a) contracts that provided similar litigation support services. As a result, the Agency used multiple contracts that required additional contract management staff to procure similar services. Fully documenting its decision would have helped NEIC analyze administrative costs under various options and identified the cost of all options.

Independent Government Estimates Were Not Prepared Apart From Contractor Input

NEIC's independent Government estimates (IGE) were not prepared apart from contractor input. NEIC's Memorandum of Understanding with Justice stated that IGEs will be generated for each work assignment. EPA guidance, *Independent Government Estimates*, dated March 3, 1993, required an IGE for each procurement action greater than \$25,000. It also stated that, "Contractors must not participate in the development of an IGE." Although NEIC prepared IGEs for all work assignments (not just those greater than \$25,000), it did so only after receiving the contractor estimate. Preparing the IGE after receiving the contractor's estimate could impair the Government's ability to maintain its objectivity and its ability to provide a truly independent estimate.

We reviewed nine files and found no evidence that NEIC had prepared cost estimates prior to receiving the contractor estimate. NEIC case managers stated that they informally estimated how much time a project would take and how much it should cost. They approved an estimate when they signed the contractor's estimate. According to the case managers, the signed contractor's estimate reflected negotiations that had taken place between NEIC and the contractor. NEIC developed a computerized estimating form that will make it easier to estimate the cost of individual work orders. In the future, case managers intend to fully document their estimate, the original contractor estimate, and the final negotiated amount for each project.

NEIC Should Continue to Monitor Staff Requirements

While we recognize the intangible benefits of maintaining a contractor representative in each region (such as case familiarity,

the unwillingness of most EPA attorneys to allow files to leave the region, quick response to in-house projects, and enhanced working relationship with the WAM and client), some regional workloads may not support a contractor representative in each region. NEIC reviewed contractor time charges monthly and had Justice reduce contractor staff levels in one region. NEIC had Justice reduce staff in Region 3 from three employees to one because the workload was less than expected.

We reviewed four timesheets from each regional contractor representative's time charges between October 1, 1995, and May 12, 1996. We found that the average staff time charged directly to EPA projects was 69 percent. Direct time charges ranged from 98 percent in one region to 27 percent in another. Conversely, 31 percent of contractor time charges were for administrative (21 percent) and leave (10 percent) time. While we only reviewed four pay periods, the results of our review did highlight the need to continue to monitor contractor usage rates and reduce or increase staff levels where appropriate.

#### NEIC May Have Paid Unnecessary Sales Taxes

NEIC may have paid unnecessary sales taxes on goods procured by the Justice contractor. We reviewed nine case files and found that five invoices NEIC approved for reimbursement of goods procured by the Justice contractor included sales tax. The Justice contract stated:

Supplies and services procured on behalf of the Government under this contract will generally be exempt from State and local taxes. The contracting officer will provide a completed Standard Form 1094, U.S. Tax Exemption Certificate where appropriate.

NEIC staff should determine if the Justice CO provided a tax exemption certificate to its contractor. If not, NEIC should ask the CO to do so. If the CO provided such a certificate, NEIC should ask that the CO require its contractor to use the tax exemption whenever possible. We did not estimate how much NEIC may have paid in unnecessary sales tax.



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**CONCLUSIONS**

NEIC's case managers were significantly and meaningfully involved in monitoring work performed under NEIC's IAG with Justice. Although NEIC representatives told us they conducted lengthy discussions regarding the pros and cons of entering into an IAG to use Justice's contractor, they did not fully document the results of their discussions and analysis and did not compare the cost of the IAG with other options. NEIC representatives did not thoroughly investigate other options or other contracts in place at EPA that could have provided litigation support services and did not prepare IGEs independent of contractor input. Although maintaining a contractor representative in each region has intangible benefits, NEIC needs to continue to analyze regional workload requirements and assess the benefit of maintaining a contractor representative in each region. Finally, NEIC may be paying unnecessary sales taxes on goods procured by the Justice contractor.

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**RECOMMENDATIONS**

The Director should:

1. Fully document the decision and cost effectiveness for using an IAG and the basis for determining that this IAG is in the best interest of the Government.
2. Require case managers to develop IGEs independent of information provided by the Justice contractor.
3. Require case managers to continue to monitor contractor billings to evaluate the cost effectiveness of having a contractor representative in each region and request Justice to modify regional staff levels where appropriate.
4. Ensure Justice's CO has provided tax exemption certificates to the contractor where appropriate and instruct Justice's CO to ensure its contractor uses the tax exemption whenever possible.

ABBREVIATIONS

CO	Contracting Officer
EPA	Environmental Protection Agency
FMFIA	Federal Managers' Financial Integrity Act
IAG	Interagency Agreement
IGE	Independent Government Estimate
Justice	Department of Justice
NEIC	National Enforcement Investigations Center
OAM	Office of Acquisition Management
OECA	Office of Enforcement and Compliance Assurance
OIG	Office of Inspector General
WAM	Work Assignment Manager

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