



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

SEP 29 1998

OFFICE OF
THE INSPECTOR GENERAL

MEMORANDUM

SUBJECT: Report of Audit No. E1BMF7-23-0012-8100251
Review of Personal Services

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

A copy of the subject final report is attached. This report contains findings that describe the results of our review of personal services under EPA contracts. We hope that the results of our review will be useful to you as you continue to work to assure personal services relationships between EPA personnel and contractors are avoided.

This report represents the opinion of the Office of Inspector General. Final determinations on matters in this report will be made by EPA managers in accordance with established EPA audit resolution procedures. Accordingly, the findings described in this audit report do not necessarily represent the final EPA position. We have no objection to the release of this report to the public.

Your response to our draft report is included as appendix 1. Based on the Office of Administration and Resources Management's response and discussions with our staff, we made appropriate changes to this final report.

ACTION REQUIRED

In response to the draft report, you provided responsive action plans and milestone dates for correcting our findings. As a result, and in accordance with EPA Order 2750, we find your response to the report acceptable. Therefore, we are closing this report in our tracking system as

of this date. Please track all planned actions and milestone dates in the Management Audit Tracking System. Should you or your staff have any questions regarding this report, please contact Leah Nikaidoh, Audit Manager, Northern Audit Division at (513) 487-2365.

Attachment

EXECUTIVE SUMMARY

PURPOSE

In 1997, we reviewed EPA's progress since 1992 in addressing contracts management deficiencies identified by the Agency's Standing Committee on Contracts Management (Standing Committee). One of the seven problem areas identified by the Standing Committee was personal services. During our 1997 review, 38 percent of the contracts we reviewed for personal services showed indications of such relationships between EPA and contractors. EPA personnel were co-located with contractors on all of these contracts, and indications of personal services relationships occurred throughout the Agency's programs.

The objectives of this audit were to determine: (1) the extent EPA contracts included personal services relationships, and (2) the adequacy of the Agency's controls to prevent personal services contracts.

RESULTS IN BRIEF

We found specific instances of personal services problems, or the appearance of such, in over half of the contracts reviewed, and among nearly all of the major program offices. In several instances, the agency has taken action to correct the problems. We also found indicators of personal services in two additional contracts (see exhibit 1). Because of the number and distribution of such instances across the Agency, the potential exists that personal services is a continuing systemic problem. On-site contracts are especially vulnerable to personal services situations because of the potential for daily face-to-face interaction between EPA staff and contractors. Program offices and contracting divisions each must share the role of ensuring that personal services do not occur. Program offices, with the help of contracting offices, should attempt to eliminate unnecessary interactions with contractors, including shifting work off-site if possible.

Instances of personal services, or the appearance of such, occurred in 13 of 23 (56 percent) contracts, primarily because: (1) EPA program office employees exercised excessive supervision of

contractor and subcontractor staff, (2) close working arrangements existed, or (3) contract language and oversight needed improvement (see chapter 2). EPA improperly treated contractor staff as Government employees. Normally, the Government directly hires its employees under competitive appointment or other procedures mandated by civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws and Office of Management and Budget personnel ceilings. Also, in some cases, contractors performed work outside the scope of their contracts.

The Agency's controls generally seemed adequate. However, EPA personnel were not always committed to following the controls, resulting in the above instances of personal services. Assigning knowledgeable and committed project officers to monitor contracts and awarding fixed-priced contracts, in some cases, significantly reduced the risk of personal services.

RECOMMENDATIONS

We recommend that the Acting Administrator for Administration and Resources Management and the Agency Senior Resource Officials:

1. Identify all contracts where EPA and contractors are co-located, and evaluate and document whether any on-site contracts can be moved off-site.

We recommend that the Acting Administrator for Administration and Resources Management:

2. Direct contracting divisions to incorporate a contract clause similar to the one used by the Cincinnati Contracts Management Division ("Government Contractor Relations") in all EPA contracts.
3. Direct Agency contracting officers to conduct a site visit at least annually for all on-site contracts and document whether personal services deficiencies were identified. If deficiencies are identified, the contracting officer should

provide needed guidance or recommendations to the project officer.

AGENCY COMMENTS

The Acting Assistant Administrator for Administration and Resources Management provided a written response to our draft report on September 4, 1998. The Acting Assistant Administrator agreed with all recommendations in this report.

The Acting Assistant Administrator plans to: (1) coordinate with EPA program offices to complete a review and analysis, within 90 days of this report's issuance, determining whether contractors working at EPA locations can be moved off-site; (2) develop an Agency-wide contract clause to clarify allowable Government/ Contractor Relations; and (3) modify EPA's Acquisition Regulation to include the requirement to use this Agency-wide clause. Modification of EPA's Acquisition Regulation is to be completed by February 1999. Contracting officers will also perform site visits for all on-site contracts, and contracting officers will discuss personal services issues with project officers for such contracts on an annual basis. The Office of Acquisition Management plans to issue a memo to contracting officers informing them of this requirement by December 1998.

We have included a summary of the Acting Assistant Administrator's comments in appropriate sections of this report. His entire response is included as appendix 1 to this report.

OIG EVALUATION

The actions described above, when completed, and the actions taken to date, will adequately address the findings and recommendations in this report.

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Abbreviations

CMD-RTP	Contracts Management Division-Research Triangle Park
DOPO	Delivery Order Project Officer
EPA	Environmental Protection Agency
FAR	Federal Acquisition Regulation
OAR	Office of Air and Radiation
OARM	Office of Administration and Resources Management
OPPTS	Office of Prevention, Pesticides, and Toxic Substances
ORD	Office of Research and Development
OSWER	Office of Solid Waste and Emergency Response
OW	Office of Water
RTP	Research Triangle Park
WED	Western Ecology Division

CHAPTER 1

Introduction

PURPOSE

In 1992, EPA first declared contracts management as a Presidential-level weakness under the Federal Managers' Financial Integrity Act. In June 1992, EPA's Standing Committee on Contracts Management (Standing Committee)--now called the Resource Management Committee--made 40 recommendations to correct longstanding weaknesses in contracts management. The Standing Committee's report identified seven problem areas, one of which was that personal services were improperly occurring under EPA contracts.

Since 1992, EPA has taken positive steps to address contracts management deficiencies. However, in our review of the Agency's Contract Management Initiatives (EPA Report 7400070, dated September 30, 1997), we recommended that the Acting Assistant Administrator for Administration and Resources Management continue to include contracts management as an Agency-level weakness for fiscal 1997. We made that recommendation because we found continued indications of potential vulnerabilities in three of the seven areas, including personal services. Specific indicators of personal services we found included:

- 38 percent (5 of 13) of the contracts we reviewed for personal services had indications of such relationships;
- All 5 of those contracts had some type of on-site/co-location arrangements between EPA and contractor staff; and,
- Indications of personal services relationships occurred throughout the Agency (in the regions, the Offices of Administration & Resources Management, Research & Development, and Policy Planning & Evaluation).

Personal services relationships can have several undesired effects. First, if unauthorized Agency personnel direct contractor staff, the contractor might perform work outside the scope of the contract,

creating legal problems. Second, close relationships between EPA and contractor personnel could give that contractor an advantage during future contract awards and decrease the chance other offerors have of receiving contracts. Third, normally the Government directly hires its employees under competitive appointment or other procedures mandated by civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents those laws and Office of Management and Budget personnel ceilings. Finally, personal services relationships--which blur the roles of Government personnel and contractor staff--could cause the public to seriously question whether the Government is truly protecting the public's interests.

The objectives of this audit were to determine: (1) the extent EPA contracts include personal services relationships, and (2) the adequacy of the Agency's controls to prevent personal services contracts.

BACKGROUND

The Federal Acquisition Regulation (FAR) Part 37 on service contracting discusses personal services contracts. A personal services contract, by its written terms or as administered, makes the contractor staff appear to be Government employees. Such contracts are characterized by an employer-employee relationship between Government and contractor personnel. The key indicator of personal services is when contractor personnel are subjected to continuous supervision and control of a Government employee(s). According to FAR 37.104(b), agencies are not permitted to award personal services contracts, unless specifically authorized by statute.

FAR 37.104 lists the following descriptive elements to be used as a guide in assessing whether a proposed contract is "personal" in nature and an improper contract relationship might exist:

- (1) Contractor performance of services is done on a Government site;
- (2) The Government furnishes principal tools and equipment to the contractor to execute the contract;

- (3) Services are applied directly to the integral effort of the agency in furthering its function or mission;
- (4) Comparable services, meeting comparable needs, are performed in the same agency or similar agencies using civil service personnel;
- (5) The need for the contractor-provided service can reasonably be expected to last beyond one year; and,
- (6) The inherent nature of the service, or manner in which it is provided, reasonably requires, directly or indirectly, Government direction or supervision of contractor employees in order to (a) adequately protect the Government's interest, (b) retain control of the function involved, or (c) retain full personal responsibility for the function supported in a duly authorized Federal employee.

EPA Order 1900.1A, Use of Contractor Services to Avoid Improper Contractor Relationships (the Order), issued in April 1994, provides guidance related to avoiding improper contractor relationships. The Order addresses five areas: (1) interaction with contractor personnel, (2) identification of contractor personnel, (3) contractor attendance at EPA functions and meetings, (4) contractor employee conduct, and (5) physical space concerns.

The Order states that EPA employees, other than the Project Officer, Work Assignment Manager, or Contracting Officer, may not assign tasks to a contractor unless they have specific authority to do so. Technical direction must be issued in writing from the Project Officer (or authorized designee) to the contractor's point of contact. Oral technical direction must be put in writing within five calendar days.

According to the Order, "at all times, it shall be readily apparent which organization employs an individual." Contractor personnel should wear appropriate badges identifying them as such. Contractors should also identify themselves and their employer in all points of contact, including during meetings, and on Agency voicemails and e-mails. Contractor personnel should never attend meetings as the official representative of an EPA organization. Agency employees also shall not permit contractors to attend EPA functions, including holiday parties, unless documented as required for contract performance. To the extent possible, EPA staff shall

be physically located in separate areas from contractor personnel, and contractors' areas should be identified as such. In cases where both EPA and contractor staff must occupy or use a general area, there must be physical separation and identification of space.

The Order also lists examples of prohibited personal services, such as:

- (1) EPA employee routinely gives instructions and directions directly to contractor staff.
- (2) EPA employee recommends, or refuses to have, specific contractor staff assigned to work.
- (3) EPA employee sits in an interview for potential contractor hires and suggests who to hire.
- (4) EPA employee invites contractors to attend EPA meetings not related to the contract work.
- (5) EPA employee enters a contractor's work area when no contractor supervisor is present.
- (6) EPA employee directly requests contractor personnel to prepare a special report (not otherwise required by the contract) from a database the contractor maintains.

The General Services Administration states that the following factors also tend to characterize services as personal services:

- (1) Government can obtain civil service employees to do the job.
- (2) Government assigns tasks to, and prepares work schedules for, contractor employees.
- (3) Government reserves the right to control the number of people employed and the duties of individual contractor employees.
- (4) Contractor staff are used interchangeably with Government staff to perform the same functions.
- (5) Contractor personnel are integrated into the Government's organizational structure.

**SCOPE AND
METHODOLOGY**

We reviewed 23 contracts for personal services issues (see exhibit 1).

We discussed our proposed sampling methodology with Agency officials in October 1997. We agreed that we would focus our review on higher-risk, on-site contracts (that is, contractor staff and EPA employees were co-located), and that we would cover contracts from all major program offices. In October 1997, Agency contracting officials in Headquarters, RTP, Cincinnati, and the regions provided the Office of Inspector General with lists of the on-site contracts they managed that were active as of fiscal year (FY) 1996. These lists totaled 165 contracts.¹ We reduced the universe of 165 to 84 contracts by removing all contracts: (1) with a low risk for personal services (janitorial, mail room, guard services, etc.); (2) which expired on or before September 30, 1997, and did not have a follow-on contract with the same contractor; or, (3) that were recently awarded and were not follow-on contracts. We then selected 23 contracts from the list of 84; twelve of which were randomly selected. Of the remaining 11, we selected 7 contracts because of the large dollar value (\$50 million or more), and 4 others because we were asked to review the contract.

For each contract, we reviewed contract file documentation, including Statements of Work, work assignments or delivery orders where applicable, technical directives, and contractors' monthly progress reports. We interviewed the contracting officer, the project officer, work assignment managers or delivery order project officers, and contractor staff. We also conducted site visits to EPA space occupied by contractors to observe whether offices were properly marked and contractor staff appropriately identified. We visited EPA offices in Washington, D.C.; RTP, NC; Cincinnati, OH; Edison, NJ; Philadelphia, PA; Dallas, TX; and Ada, OK.

¹To maintain our independence, we excluded from our universe any contracts where the Project Officer was an Office of Inspector General employee.

We performed our audit in accordance with the 1994 Government Auditing Standards issued by the Comptroller General. We conducted fieldwork from October 1997 to May 1998.

**PRIOR AUDIT
COVERAGE**

The Office of Inspector General issued a report on September 30, 1997, which addressed EPA's efforts since 1992 to correct longstanding weaknesses in contracts management (EPA Report No. 7400070). We found that although the Agency had taken positive steps to address contracts management weaknesses, potential vulnerabilities still remained in three areas, including personal services.

This specific audit of personal services was conducted as a result of our prior findings in Report No. 7400070.

CHAPTER 2

Instances or Appearance of Personal Services Under Contracts

Instances of personal services, or the appearance of such, occurred in 13 (56 percent) of 23 contracts (see exhibit 1), primarily because: (1) EPA program office employees exercised excessive supervision of contractor and subcontractor staff, (2) close working arrangements existed, or (3) contract language and oversight needed improvement. As a result, EPA treated contractor staff as Government employees and appeared to circumvent personnel ceilings. According to the Federal Acquisition Regulation 37.104(b), "Agencies are not permitted to award personal service contracts, unless specifically authorized by statute." None of the contracts reviewed were authorized as personal service contracts. (See exhibit 2 for a list of all personal services issues by contract.) We also found indicators of personal services in two additional contracts.

The Agency's controls generally seemed adequate to prevent personal services. However, EPA personnel were not always committed to following the controls, resulting in the instances or appearance of personal services we identified. As evidenced in two contracts we reviewed--one ORD and one OW contract--assigning knowledgeable and committed project officers to monitor contracts and awarding fixed-priced contracts can significantly reduce the risk of personal services.

This report covers all instances of activities we found that were contrary to personal services policies and regulations. Some contracts exhibited more instances of personal services than others, or more prevalent weaknesses. However, all these identified instances, whether isolated or widespread, are worthy of management attention and correction. We found instances of personal services problems, or the appearance of such, in over half of the contracts reviewed, and among nearly all of the major program offices. Although program offices may view these cases as isolated, the number and distribution of such instances across the

Agency increases the potential that personal services is a continuing systemic problem.

**EPA EMPLOYEES
EXERCISED
EXCESSIVE
SUPERVISION**

EPA employees exercised excessive control and supervision over contractor and subcontractor staff on 13 of the 23 (56 percent) contracts in the following ways²:

- (1) Unauthorized EPA employees directed contractor staff.
- (2) Project Officers/Work Assignment Managers directed contractor staff.
- (3) EPA employees interacted with and directed subcontractors.
- (4) EPA staff recommended specific personnel be hired or staffed on projects.

**Unauthorized EPA
Employees Directed
Contractor Staff**

Unauthorized EPA employees directed contractor staff to perform tasks without the Project Officer's knowledge and/or written authorization on four contracts. According to EPA Order 1900.1A, only the EPA Contracting Officer, Project Officer or authorized designee may communicate with the contractor. On all four contracts (68C60074, ORD; 68C60082, ORD; 68W50008, OPPTS; and 68C30330, OW), EPA employees directly contacted the contractor and requested work to be done. For example, on contract 68W50008, an EPA employee worked with the contractor to complete data requests. The employee stated that he was authorized to direct the contractor because he was an "unofficial" Work Assignment Manager. In all four cases, the contractors performed the requested tasks, and the EPA employees did not have the authority to direct the contractor. Without specific designation from the Project Officer and approved by the Contracting Official via an EPA Form 1900-65, Nomination and Appointment of Contracting Officer's Representatives, an EPA employee may not direct a contractor to perform any tasks. Unauthorized work requests could, and did, result in the contractor performing work outside the scope of the contract.

ORD took corrective actions on its two contracts. On contract 68C60074, an ORD Extramural Management Specialist and the

²We found more than one of these four issues on some contracts.

Project Officer advised the contractor's Project Manager to direct his staff not to perform work for EPA unless work requests are approved by the Project Officer or Work Assignment Manager. On contract 68C60082, the Project Officer held several training sessions with EPA personnel to ensure that they were aware of the proper way to interact with contractors. The Project Officer also instructed the contractor to provide her with the names of any EPA staff who directly request work to be done.

**Project Officers/Work
Assignment Managers
Directed Contractor Staff**

EPA Project Officers/Work Assignment Managers directed contractor staff, and did not always provide technical direction in writing, on four contracts. EPA Order 1900.1A states that technical direction should be provided, in writing, to the contractor's point of contact and, if the direction is given orally, technical direction should be put in writing within 5 calendar days. In two cases (68D60059, OAR; and 68C50008, ORD), the Project Officers provided oral instructions on a regular basis. In both of these cases, the contractor's Program Managers were not located on-site at an EPA facility. All work direction from the EPA must go through the contractor's Program Manager before the work can be started (Work Assignment) or clarified (Technical Direction). Lack of an on-site Program Manager increases the risk that EPA employees will interact and communicate directly with the contractor staff, thus creating personal services. ORD informed us that they are taking action to correct problems identified on contract 68C50008. An ORD Extramural Management Specialist stated that ORD is planning to consolidate this contract into another on-site contract where additional structural and administrative oversight and controls should preclude the personal services vulnerabilities identified.

On another contract (68D30024, ORD), the Project Officer provided technical direction to the contractor via telephone calls. He stated that the information provided was simply clarification and did not need to be put in writing. The contractor's Project Manager documented the information in memos to his files. Also, the Project Manager stated that he occasionally went to lunch/dinner with the Project Officer and discussed additional services his company could provide under the contract. The Contracting Officer stated that the telephone call information constituted technical direction and the Project Officer should have put such direction in writing. The

Contracting Officer instructed the Project Officer to document future phone calls in writing, and the Project Officer agreed to do so. The Contracting Officer also informed the Project Officer that it is the responsibility of the EPA, not the contractor, to define the Government's requirements.

On the fourth contract (68C30330, OW), we found the appearance of a personal services contract. We issued a separate report on this contract to the Office of Water (EPA Report No. 8100092).

**EPA Employees
Interacted with and
Directed Subcontractors**

EPA employees interacted with and directed subcontractors on four contracts. According to FAR Part 42.505, "Government representatives must recognize the lack of privity of contract between the Government and subcontractors." In essence, the Government has no contractual relationship with subcontractors. EPA employees are not permitted to provide direction to subcontractor employees.

In two cases (68W10055, OARM; and 68S53002, Region 3), EPA Project Officers and Work Assignment Managers interacted and directed subcontractors because the contract was designed to permit "dedicated team subcontracting." This concept involves a closer working relationship between the contractor and subcontractor than is typical. Under these conditions, the subcontractor employees act as, and are assigned to the contract as, employees of the prime contractor. One of the contracts also had a subcontractor employee designated as the Program Manager--typically EPA's main point of contact for contractor communications.

In the other two cases (68W40010, Region 3; and 68W40016, Region 6), unauthorized EPA employees requested subcontractor staff to perform various tasks. In all cases, according to EPA Order 1900.1A, EPA Project Officers and Work Assignment Managers should communicate only with the prime contractor's point of contact.

Region 3 has taken corrective actions for contract 68W40010. Region 3 officials stated that they issued a memorandum underscoring the importance of avoiding personal services. In addition, they sent a message to Region 3 Project Officers and Work

Assignment Managers, reminding them that they should only interact and have discussions with the prime contractor.

Region 6 has taken corrective actions for contract 68W40016. Region 6 officials stated that they and the contractor instituted procedures that should ensure that EPA personnel deal only with the prime contractor's Program Manager. Also, the Contracting Officer and Project Officer started performing contract monitoring checks during which they inspect work spaces for compliance with contracting regulations.

**EPA Staff Recommended
Specific Personnel be
Hired or Staffed on
Projects**

EPA employees recommended that specific contractor personnel be hired or staffed on projects, on three contracts. In one case (68C40045, OARM), an EPA Project Officer provided input to a follow-on contractor regarding which applicants should be hired. According to the Contracting Officer, the contractor's owner stated that he planned to contact the EPA Project Officer to decide which employees should be hired. The Contracting Officer informed him that he should not talk to the Project Officer or any other EPA employee about staffing. Another representative from the contractor said that it was normal for them to contact the Agency's Project Officer and ask who should be hired. The Project Officer met personally with the owner and gave him a list of the prior contractor's employees and discussed the list with the incoming contractor two weeks before the award and re-hiring of staff. The new contractor did not contact representatives of the former contractor to ask who their best employees were, which would be common practice. The Cincinnati OARM Security and Safety official stated that the OARM Senior Resource Official has arranged for formal remedial training for all OARM Project Officers, Work Assignment Managers, and Delivery Order Project Officers on personal services issues.

Under a second OARM contract (68W10005, OARM), the contractor's Technical Project Leader indicated that EPA's DOPO sometimes asked for specific contractor staff to be placed on certain tasks.

In another case (68W40010, Region 3), an EPA Work Assignment Manager directed the contractor to use a certain subcontractor employee for a work assignment. A contractor representative stated

that the Work Assignment Manager liked the work of a particular subcontract employee, and believed he was valuable to the assignment. The Work Assignment Manager directed the contractor to use that employee, and the contractor personnel did not believe they could refuse.

CLOSE WORKING RELATIONSHIPS EXISTED

Close working relationships existed on three contracts which lead to personal services. If not properly monitored and supervised, close working environments make contracts vulnerable to personal services.

Under one ORD contract (68C40002, ORD), problems occurred with technical direction to contractors and with property management.³ These problems resulted from a "one workforce" environment--that is, EPA staff and contractors appearing to be one organization--at ORD's Western Ecology Division (WED). Forty-two percent of the total on-site staff at Newport worked for various contractors; 17 percent of the total staff were contractors under contract 68C40002. ORD reported in its May 1998 Management Review that some task directives were improperly issued to add or delete deliverables, change deliverable due dates, and add or delete tasks. These task directives were beyond the scope of the technical direction clause in the contract and were not authorized by the Contracting Officer. As a result, such actions demonstrated an uncontrolled and improper personal services relationship between EPA and the contractor. Technical direction may not be used to change any of the express terms and conditions of work assignments, including adding work, changing work that has been ordered, changing the period of performance, or altering the cost of the work. ORD's WED, working with the Contracts Management Division in RTP (CMD-RTP), took corrective actions to ensure that work is assigned properly under the contract. For example, WED instructed its Branch Chiefs, Project Officers, and Work Assignment Managers to issue work assignment amendments when changes are made to previously assigned work.

³We did not review this contract but instead, with ORD's concurrence, relied on the results from ORD's May 1998 Management Review report of ORD's Western Ecology Division in Corvallis and Newport, OR.

ORD also reported weaknesses with property management under contract 68C40002. In general, ORD often informally provided property to the contractor, and the contractor did not record, track, or report the property. ORD routinely provided personal computers and a hovercraft to the contractor prior to the Contracting Officer's authorization. Further, the hovercraft was purchased as a new acquisition specifically for the contractor's use, which is improper. EPA Procurement Policy Notice 96-03 prohibits the acquisition of property with the intent to provide it to a contractor for use. The contractor stated that its staff used all of the lab equipment exclusively, too. The contractor also routinely acquired small equipment items (cameras, binoculars, power drills, etc.) without the Contracting Officer's authorization, which was a breach of a specific contract clause. Finally, the contract did not reflect all property held by the contractor, and the contractor was not fulfilling its obligation of recording and tracking the property. ORD also inappropriately assisted the contractor in managing contractor-held property, and assigned property to specific contractor employees. WED is currently working with CMD-RTP to provide training to WED employees on appropriate property management procedures.

Under the other two contracts (68W10055, OARM; and 68W40016, Region 6), EPA employees occupied, and worked out of, space at the contractor's or subcontractor's own off-site offices. The Statement of Work for contract 68W10055 required the contractor to provide an office facility to house the contractor, subcontractor, and EPA employees. Personal services issues identified on this contract included: EPA employees recommended that specific contractor personnel be staffed on projects, and EPA employees dealt directly with subcontractors. Close physical working relationships allowed EPA personnel to interact with contractor and subcontractor staff on a regular basis and facilitated the personal services issues.

The General Counsel, in an opinion dated December 18, 1996, stated that an agency may direct a contractor to acquire leased space, provided that the acquisition is "incident" (necessary) to contract performance within the contract scope, and not intended to acquire space for the Government's use. According to a key Office of Information Resources Management official, EPA program office

personnel did not need to be co-located with contractor or subcontractor staff.

A former Contracting Officer expressed concerns about why EPA was requiring the contractor to lease office space for subcontractors, and EPA staff. An Office of Acquisition Management Service Center Manager expressed the same concern and revised the Statement of Work for the follow-on contract to be awarded in fiscal 1999. The EPA-imposed leased space requirement was omitted in the draft Statement of Work dated February 1998.

**CONTRACT
LANGUAGE
AND OVERSIGHT
NEEDED
IMPROVEMENT**

Personal services, or the appearance of such, occurred, in part, because Statements of Work contained language allowing personal services. Contracting offices also generally did not conduct on-site reviews to determine if internal controls were in place and implemented to prevent personal services.

**Statements of Work
Contained Language
Allowing Personal
Services**

Personal services, or the appearance of such, occurred in 4 of the 23 (17 percent) cases because Statement of Work language allowed such activities. The Office of Acquisition Management and its contracting divisions are responsible for ensuring that Statements of Work are free of personal services language and tasks.

On one contract (68W10055, OARM), the Statement of Work contained several instances of language indicating a potential for personal services. Most notably, the contractor was tasked with being the "institutional memory" for EPA's information systems and programs. The Statement of Work also required the contractor to provide office space to house not only the contractor and subcontractor staff, but also EPA staff. There is also language indicating that the Contracting Officer, Project Officer, Delivery Order Project Officer, or EPA Technical Manager had the ability to demand removal of contractor personnel when these EPA staff deemed the continued assignment of these personnel were in conflict with the Government's interest. According to EPA Order 1900.1A, EPA officials are prohibited from intervening in the hiring or firing of contractor staff.

The Office of Acquisition Management intends to award a follow-on contract in December 1998. It has revised the Statement of Work for the upcoming contract and eliminated all language requiring coordination between the contractor and anyone other than appropriate EPA officials. The Office of Acquisition Management has also deleted the requirement that the contractor provide permanent office space for EPA staff.

In another contract Statement of Work (68C60082, ORD), EPA required that, "All contractor employees shall sign in and out each day with the contractor's Project Manager." According to EPA Order 1900.1A, "A personal services contract is a contract which, by its terms or as administered, results in contractor personnel being subject to relatively continuous supervision and direct control by a Government official or employee." The language in this Statement of Work indicates an unnecessary level of supervision on EPA's part. The Project Officer stated that she liked the requirement because she wanted to see the attendance information to make sure the contractor is working the appropriate hours for the hotlines it supports. Under this fixed-price contract, there is no need for EPA to require the contractor staff to sign in and out. The contractor's Program Manager is responsible for the hours her staff works, not EPA. The Contracting Officer also agreed that this language should not be in the Statement of Work⁴.

Another contract (68C40045, OARM) Statement of Work said that:

The security personnel excluding the on-site contract supervisor are required to use a time clock provided by EPA. It is also the responsibility of the security personnel to monitor the use of the time clock by other on-site contractor employees to assure that the proper procedures are followed and that individuals only punch their own cards.

Having the guards monitor other contractors is inappropriate, and outside the scope of a contractor's responsibility. The contract

⁴The Contracting Officer recently inherited responsibility for the contract due to a reorganization and was not responsible when the contract was awarded.

specifically stated that the contractor should not be placed in a position of command, supervision, administration or control over personnel of other contractors.

According to the Project Officer, the contractor did monitor the time clock usage by other contractors. He said that the language was put into the Statement of Work by a former manager who wanted certain contractor's time charging monitored. The Project Officer stated that the contractor is no longer performing this task under the follow-on contract. However, the Statement of Work for the follow-on contract awarded in September 1997 contained the same language. The Project Officer stated that he would coordinate with the Contracting Officer to issue a modification to remove that language from the new contract. The Contracting Officer agreed that the language should be removed.

**Cincinnati Contracts
Division Incorporated
Contract Clause Into
All On-Site Contracts**

On a positive note, the Cincinnati Contracts Management Division routinely incorporated a specific clause ("Government Contractor Relations") into the on-site contracts it awarded. This clause delineates proper interactions between EPA and contractor employees. The RTP and Headquarters contracting divisions did not use a similar clause in their on-site contracts. The clause states:

(a) The Government and the Contractor understand and agree that the services to be delivered under this contract by the Contractor to the Government are non-personal services and the parties recognize and agree that no employer-employee relationship exists or will exist under the contract between the Government and the Contractor's employees. It is therefore in the best interest of the Government to afford both parties a full and complete understanding of their respective obligations.

(b) Contractor personnel under this contract shall not:

(1) Be placed in a position where they are under the supervision, direction, or evaluation of a Government employee.

(2) Be placed in a position of command, supervision, administration or control over Government personnel, or personnel of other contractors, or become a part of the Government organization.

(3) Be used in administration or supervision of Government procurement activities.

**Contracting Officers
Generally Did Not
Conduct On-Site
Reviews**

Contracting Officers did not conduct on-site reviews for 16 of 21 (76 percent) contracts.⁵ We found personal services issues, or the appearance of such, on 10 of the 16 (63 percent) contracts. Without conducting reviews of on-site contracts, Contracting Officers have limited assurance that personal services are being avoided. In general, Contracting Officers acknowledged that they should visit the sites where EPA and contractor staff are co-located. Contracting Officers said they did not conduct reviews because they did not have time given their workloads. However, in most of the cases, the Contracting Officers were within five miles of the EPA site, and some were even in adjacent buildings. EPA's Contracts Management Manual states that "The Contracting Officer is responsible for performance of all necessary actions for effective contracting, ensuring compliance with the terms of the contract, and safeguarding the interests of the United States in its contractual relationships." This responsibility includes ensuring that laws and regulations created to safeguard contracts against personal services are implemented⁶.

⁵Two of the 23 contracts reviewed were off-site contracts. Therefore, the Contracting Officers would not conduct an on-site review.

⁶ORD conducts management reviews of all of its Divisions on a routine basis. ORD has worked with the Office of Acquisition Management to include a significant contracting officer presence on ORD's 1997 and 1998 management reviews. This joint effort has been made to help increase the level of contracting officer oversight of the effectiveness of ORD's contract management controls, including those for personal services.

**TWO CONTRACTS
WERE MANAGED
WELL TO PREVENT
PERSONAL SERVICES**

Two of the contracts we reviewed, one ORD and one OW, stood out with regard to the steps taken to prevent or avoid personal services. Under ORD contract 68W50065, valued at over \$71 million, the Project Officer was key to preventing personal services. The Project Officer was very knowledgeable of personal services issues and, with the assistance of ORD's Extramural Management Specialist Network, established and implemented effective controls. The Project Officer:

- Visits, at least every other year, each of the sites (in thirteen cities) where about 250 contractor employees are co-located with ORD staff on this contract. He inspects the site to make sure that contractor space is separate and identifiable from EPA space, and that badges are worn and phones are answered properly. He also evaluates whether EPA staff have supervised contractors.
- Reviews all delivery orders and ensures that the orders are approved by delivery order project officers (DOPOs) before the contractor begins work.
- Tracks the status of all delivery orders under the contract.
- Reviews all contractor-submitted monthly progress reports to evaluate whether the contractor conducted work outside the scope of the contract.
- Stresses to the DOPOs that they are to deal only with the contractor's designated on-site delivery order manager, and not other contractor staff.
- Tracks all of the DOPOs' training records to assure that the DOPOs take required training as appropriate.

The DOPOs we interviewed were also knowledgeable of personal services issues and commended the Project Officer for keeping them informed about the contract. The DOPOs also properly documented all work requests issued to the contractor. The

contractor's offices in RTP and Cincinnati were also clearly marked as contractor occupied space.

Under contract 68C60016, the Office of Water took steps to alleviate prior personal services concerns under the contract. Prior to October 1997, the contract was a cost-reimbursable, level-of-effort contract and the contractor was located in the basement of EPA's Waterside Mall building. Without objective criteria on which to base the contractor's performance, the Project Officer stated that she felt like she needed to monitor the contractor's work schedules and continually monitor what they were doing. The Project Officer also said that when the contractor was located in the building, she communicated with them directly and often.

OW, based on the Office of Acquisition Management's recommendation, restructured this requirement and the Cincinnati Contracts Division awarded a fixed-priced, performance-based contract, effective October 1, 1997. The contractor was also moved off-site to McLean, VA. According to the Project Officer, this new contract arrangement greatly reduced the potential for personal services to occur. There is no incentive for the contractor to perform extra tasks that might be outside the scope of the contract because the contractor will not be paid for doing those tasks. The Project Officer stated that this restructuring has helped EPA maintain an "arms-length relationship" with the contractor. The contract's Statement of Work also was well-written and indicated an awareness of the potential for personal services and established controls to prevent such services.

CONCLUSION

Personal services activities, or the appearance of such, occurred in over half of the contracts reviewed. On-site contracts are especially vulnerable to personal services situations, because of the potential for daily face-to-face interaction between EPA staff and contractors. Program offices and contracting divisions each play an important role in making sure that personal services do not occur. Program office employees have the primary role in preventing personal services because they are the personnel who work with contractors to complete needed tasks. Contracting officials' role, although secondary, is key in providing oversight of the legal aspects of

contract execution. Preventing personal services is a shared responsibility between the program offices and the contracting divisions. Program offices, with the help of contracting offices, should attempt to eliminate unnecessary interactions with contractors, including shifting work off-site if possible.

RECOMMENDATIONS

We recommend that the Acting Assistant Administrator for Administration and Resources Management and the Agency Senior Resource Officials:

- 2-1 Identify all contracts where EPA and contractors are co-located, and evaluate and document whether any on-site contracts can be moved off-site.

We recommend that the Acting Assistant Administrator for Administration and Resources Management:

- 2-2 Direct contracting divisions to incorporate a contract clause similar to the one used by the Contracts Management Division-Cincinnati ("Government Contractor Relations") in all EPA contracts.
- 2-3 Direct Agency contracting officers to conduct a site visit at least annually for all on-site contracts and document whether personal services deficiencies were identified. If deficiencies are identified, the contracting officer should provide needed guidance or recommendations to the project officer.

AGENCY COMMENTS

The Acting Assistant Administrator agreed with the above recommendations. Regarding recommendation 2-1, the Office of Administration and Resources Management will coordinate with EPA program offices to conduct a review and determine if current on-site contractors can be moved off-site. This review will be completed within 90 days of this report's issuance.

Regarding recommendation 2-2, the Acting Assistant Administrator plans to develop an Agency-wide contract clause specifying proper

Government/Contractor relationships. He also plans to modify EPA's Acquisition Regulation by February 1999 to include a requirement to use the Agency-wide clause.

Regarding recommendation 2-3, the Acting Assistant Administrator agreed that additional oversight is needed to identify instances of personal services under on-site contracts. EPA contracting officers will be required to perform site visits periodically for all on-site contracts. Contracting officers will also be required to discuss personal services issues annually with project officers for individual on-site contracts. The Office of Acquisition Management plans to issue a memo to contracting officers by December 1998 instructing them of the requirement.

OIG EVALUATION

The proposed Agency actions described above, when completed, will adequately address the findings and recommendations in this report.

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Results of Review

No.	Program Office	Contract	Maximum Value	No Concerns	Personal Services Indicators	Instances or Appearance of Personal Services
1	OPPTS	68W50008	\$6,590,628			✓
2	OAR	68D40102	8,350,456	✓		
3	OAR	68D60059	1,689,994			✓
4	OARM	68C70044	4,059,379	✓		
5	OARM	68W10055	215,000,000			✓
6	OARM	68C40045	1,665,144			✓
7	OARM	68W20013	103,610,110	✓		
8	OARM	68W20025	302,298,450		✓	
9	ORD	68C30322	11,173,792	✓		
10	ORD	68C40002	3,272,018			✓ (Note 1)
11	ORD	68C50008	249,963			✓
12	ORD	68C60074	2,044,618			✓
13	ORD	68C60082	1,615,608			✓
14	ORD	68D30024	1,061,661			✓
15	ORD	68D50040	6,815,572		✓	
16	ORD	68W50065	71,107,726	✓		
17	OSWER	68C40022	166,621,457	✓		
18	OW	68C30330	7,196,198			✓
19	OW	68C60016	860,636	✓		
20	OW	68C60040	3,726,029	✓		
21	REGION 3	68S53002	66,000,000	✓		✓
22	REGION 3	68W40010	50,000,000			✓
23	REGION 6	68W40016	30,803,580			✓
	TOTALS		\$1,065,813,019	8 (35%)	2 (9%)	13 (56%)

Note 1: We did not review this contract but instead, with ORD's concurrence, relied on the results of its November 1997 Management Review of the Corvallis and Newport, OR, laboratory.

Personal Services Issues

No.	Program Office	Contract #	Contract Type	Personal Services Issues
1	OPPTS	68W50008	Cost Plus	1
2	OAR	68D60059	Cost Plus	2
3	OARM	68W10055	Cost Plus	3,4,5,6
4	OARM	68C40045	Fixed Price	4,6
5	ORD	68C40002	Cost Plus	5
6	ORD	68C50008	Fixed Price	2
7	ORD	68C60074	Cost Plus	1
8	ORD	68C60082	Fixed Price	1,6
9	ORD	68D30024	Cost Plus	2
10	OW	68C30330	Cost Plus	1,2,6
11	REGION 3	68S53002	Cost	3
12	REGION 3	68W40010	Cost Plus	3,4
13	REGION 6	68W40016	Cost Plus	3,5

ISSUES

1. Unauthorized EPA employees directed contractor staff.
2. Project Officer/Work Assignment Manager directed contractor staff.
3. EPA employees interacted with and directed subcontractors.
4. EPA staff recommended specific contractor personnel be hired, or staffed on projects.
5. Close working relationships existed.
6. Statement of Work language permitted personal services to occur.

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC 20460

SEP 4 1998

OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT

MEMORANDUM

SUBJECT: Response to Draft Report of Audit No. E1BMF7-23-0012, Review of Personal Services

FROM: Alvin M. Peasachowitz
Acting Assistant Administrator

TO: Elissa R. Karpf
Deputy Assistant Inspector General

Thank you for the opportunity to provide comments on the subject audit report. We agree that personal services relationships are improper, illegal, and unallowable under EPA contracts. Although, we concur with many of the findings in the report, it should be noted that we have made significant progress in avoiding and eliminating personal services. It should also be noted that while we agree that the report contained some instances of personal services, some of the activities discussed in the report lends itself more towards indicators of personal services that requires management attention.

Detailed comments on the final report is provided and our responses are discussed by subject in the order of appearance in the report.

If you have any questions or comments, please call me at 260-4600, or have your staff call Betty L. Bailey, Director, Office of Acquisition Management, at 564-4310.

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

(1) Unauthorized EPA Employees Directed Contractor Staff

OARM Response:

68C60074, ORD - We concur with this finding. The Contracting Officer (CO) has scheduled a meeting for the week of August 24, 1998, to visit with the program office to conduct a personal services review and counsel the program office concerning appropriate personnel authorized to issue technical direction. The CO will also meet with the contractor during the same week to discuss this issue.

68C60082, ORD - We concur with this finding. During an all hands meeting held on July 31, 1997, the Project Officer (PO) discussed the management controls and operations guidance as it relates to this finding with all laboratory personnel. The PO also issued instructions to laboratory personnel regarding proper procedures for interacting with contractors on April 7, 1997, June 23, 1997, August 20, 1997 and June 24, 1998. In addition, on May 21, 1998, the CO discussed the IG findings with the PO. The CO is assured that the PO is familiar with the Agency's responsibilities under the contract and will make every effort to comply with the contract control procedures.

68C30330, OW - The program office does not concur with this finding. A special flash report was issued regarding this contract (Report No. 8100092). In OW's response to the Flash Report, OW responded that they did not believe this finding was a problem with respect to this contract or other OW contracts. The OW and OAM is currently working on a PBSC SOW for the follow-on requirement which would resolve this issue. We will submit the IG an estimated completion date of the SOW within one week.

68W50008, OPPTS - We concur with this finding. However, we recommend that the draft report be revised to acknowledge the fact that the EPA employee who interacted with the contractor at the time of the review had completed the training required by OAM to be appointed a work assignment manager. It was an oversight on the part of the Project Officer that the EPA 1900-65 (Nomination and Appointment of Contracting Officer's Representative form) had not been prepared. The form was completed July 24, 1998.

(2) Project Officers/Work Assignment Managers Directed Contractor Staff

68D60059, OAR - Regarding the issues raised in the report, the following corrective actions have been made. On January 26, 1998, the CO counseled the program office concerning personnel authorized to issue technical direction, the proper "chain" for all technical direction and the requirement that direction be provided/confirmed in writing. On July 8, 1998, the CO conducted an on-site personal services review of contractor's space. On July 15, 1998, the CO held a discussion with the contractor's Program Manager regarding personnel authorized to issue technical direction and the requirement that direction be provided/confirmed in writing.

68C50008, ORD - We concur with this finding. During the week of August 12, 1998, the Program Office scheduled a meeting with all parties involved to develop an action plan. We will share the plan with the IG upon completion by ORD.

68D30024, ORD - We concur with this finding. The CO informed the PO on February 19, 1998, in writing of the need to reduce verbal technical direction, including clarifications, to writing within five (5) days as required by the contract. In addition, OAM is planning to award a new IDIQ contract on October 30, 1998; with more definitive task orders requiring less technical direction. Some task orders are anticipated to be fixed price.

68C30330, OW - The program office does not concur with this finding. The OW and OAM is currently working on a PBSC SOW for the follow-on requirement which would resolve this issue. We will submit to the IG an estimated completion date of the SOW within one week.

(3) EPA Employees Interacted with and Directed Subcontractors

68W10055, OARM - We concur with this finding. The CO met with the PO and all delivery order project officers (DOPOs) in July 1998, to remind them that EPA employees are not permitted to provide direction to subcontractor employees.

68S53002, Region 3 - We concur with this finding. In July 1998, the Assistant Regional Administrator (ARA) sent a memorandum to all Region III Contracting Officer Representatives (CORs) and supervisors of CORs underscoring the importance of avoiding personal services. A fact sheet providing examples of personal service relationships was attached to the ARA's memorandum. The CORs have also been reminded by the CO that directions may only be given to prime contractors and must be written. In addition, the Regional CO is planning to issue multiple follow-on acquisitions by the third quarter of year 2000 with smaller, more discrete work statements. Reducing contract size will increase the pool of companies competing for awards and minimize the need for vulnerable team subcontractor arrangements.

58W40010, Region 3 - We concur with this finding. In July 1998, the ARA sent a memorandum to all Region III CORs and supervisors of CORs underscoring the importance of avoiding personal services. A fact sheet providing examples of personal service relationships was attached to the ARA's memorandum. The CO also sent a message in July 1998, to the CORs reminding them to only interact with the prime contractor. In addition, the CO sent a message in July 1998, to the WAM reminding the WAM that all future discussions must be with the prime contractor.

68W40016, Region 6 - We concur with this finding. Procedures were instituted in July and August 1997, by both EPA and the contractor. The procedures consist of internal correspondence, training and meeting with the contractor's senior level personnel, and more closely monitoring of contractor's performance. The procedures also assure that EPA personnel only interact with the prime contractor's Program Managers. The CO or Contract Specialist (CS) will meet with the PO and the prime contractor's Program Manager weekly to discuss activities under the contract.

Both the CO and PO will review the contractor's monthly progress reports to ensure problems are addressed and resolved promptly. Additionally, the CO and PO have initiated physical contract monitoring checks. The Region also has bi-weekly meetings with the Work Assignment Manager (WAM) to get feedback on the work assignments.

4. EPA Staff Recommended Specific Personnel be Hired or Staffed on Projects

68C40045, OARM - Based on the issues raised in the report regarding this contract, the PO denied having discussed or recommended to the follow-on contractor, what employees the contractor should hire. The program have scheduled training for all OARM project officers, work assignment managers, and delivery order officers. The training is scheduled for August 1998, and will focus on roles and responsibilities of program personnel.

68W10055, OARM - We agree with this finding. The CO met with the PO and DOPO in July, 1998, to discuss the audit finding and remind them not to discuss or recommend personnel selection.

68W40010, Region 3 - In July, 1998, the ARA sent a memorandum to all Region III CORS and supervisors of CORS underscoring the importance of avoiding personal services. A fact sheet providing examples of personal service relationships was attached to the ARA's memorandum. The CO also sent a message in July, 1998, to the CORS reminding them to only interact with the prime contractor.

5. Close Working Relationships Existed

68C40002, ORD - We concur with this finding. The current contract expires September 30, 1998. The solicitation for the follow-on was issued June 22, 1998, and an award is expected before the current contract expires. The original acquisition package contained language in the SOW which legitimized technical directives issued by the PO as work ordering mechanisms. However, the CO modified the SOW to remove all such references prior to issuing the solicitation and has counseled the PO and his managers about the requirement for detailed work assignments to be issued only by the CO. The CO scheduled a site visit to Newport and Corvallis during the week of August 3, 1998, during which time, further personal services assessment was made. In addition to the personal services review by the CO, reiteration of existing policies, guidance/instruction regarding avoidance of personal services and appropriate management of government facilities were provided to the PO and WAMs. The CO also discussed property issues with DCMC to ensure the contractor is adequately recording, tracking, and reporting all government facilities in accordance with EPA policy.

68W10055, OARM - We concur with this finding. As stated in the draft audit report, the statement of work (SOW) for the follow-on for the MOSES contract has been revised to eliminate all language requiring coordination between the contractor and anyone other than appropriate EPA officials.

The SOW has been changed to eliminate references to the leasing of space other than to say that the contractor must be accessible in the Washington D.C. area, and the majority of the task included in the SOW are performance-based.

68W40016, Region 6 - Regarding this finding, the program office did not have "offices" in the contractor's space. EPA personnel utilized the contractor's space for a limited time and only for purposes related to monitoring the work assignment and developing tasks for performance by the contractor. Access to voluminous documents being handled by the contractor was necessary in order to develop these incremental tasks. At times, prolonged access to the documents was necessary in order to characterize the tasks.

(6) Statement of Work Contained Language Allowing Personal Services

68W10055, OARM - We agree with this finding. As stated in the draft audit report, the statement of work (SOW) for the follow-on for the MOSES contract has been revised to eliminate all language requiring coordination between the contractor and anyone other than appropriate EPA officials. The SOW has been changed to eliminate references to the leasing of space other than to say that the contractor must be accessible in the Washington D.C. area, and the majority of the tasks included in the SOW are performance-based.

68C60082, ORD - We concur with this finding. The CO issued a contract modification on August 3, 1998, removing the inappropriate language from the contract.

68C40045, OARM - We concur with this finding. The CO issued a contract modification on August 3, 1998, removing the inappropriate language from the contract.

Recommendation 2-1

OIG: Recommend that the Acting Assistant Administrator for Administration and Resources Management and the Agency Senior Resource Officials identify all contracts where EPA and contractors are co-located, and evaluate and document whether any on-site contracts can be moved off-site.

OARM Response: We agree with the OIG recommendation. However, we will need to coordinate with our program offices any decisions to move contractors currently working at EPA locations. Within 90 days of issuance of the final audit report, we will complete our review and analysis of whether contractors working at EPA locations can be moved off-site.

Recommendation 2-2

OIG: Recommend that the Acting Assistant Administrator for Administration and Resources Management direct contracting divisions to incorporate a contract clause similar to the one used by the Contracts Management Division-Cincinnati ("Government Contractor Relations") contracts.

OARM Response: We agree with the OIG recommendation. The process of developing an Agency-wide clause, including modifying the EPAAR, will take approximately 7 months (February, 1999).

Recommendation 2-3

OIG: Recommend that the Acting Assistant Administrator for Administration and Resources Management direct Agency contracting officers to conduct a site visit at least annually for all on-site contracts and document whether personal services deficiencies were identified. If deficiencies are identified, the contracting officer should provide needed guidance or recommendations to the project officer.

OARM Response: We agree with OIG recommendation. Additional oversight is needed to identify instances of personal services under on-site contracts. However, budget constraints may preclude annual site visits, as many contracts are administered by COs in a different geographical location from the on-site work. We recommend that the COs perform on-site visits periodically on all on-site contracts, and if weaknesses are identified, the COs will perform annual visits. In addition, EPA will direct COs to discuss personal services issues with POs for individual on-site contracts on an annual basis. OAM will issue a memo to the COs instructing them of this requirement by December, 1998.

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