

United States
Environmental Protection
Agency

Committee on Integrity
and Management
Improvement

EPA-350-F-96-002
September 1996



Monitoring Contract Work



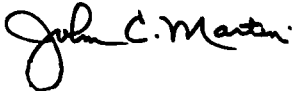
Recycled/Recyclable

Printed with Vegetable Oil Based Inks on paper that contains at least 20% post-consumer recycled fiber

Foreword

The Committee on Integrity and Management Improvement has developed this leaflet to highlight the importance of monitoring contract work and to emphasize key points contained in EPA contract administration guidance. To obtain the services needed in carrying out a wide variety of programs, EPA awards and administers a large number of contracts each year. With millions of dollars being expended on contracts, EPA managers must ensure that tight controls are maintained over each work project and that the Government receives full value for the resources expended. Agency personnel need to closely oversee each project, identify inadequate performance at an early stage, and avoid a personal services (employer/employee) relationship with contractor personnel.

Effective contract administration is a substantial challenge which requires a coordinated effort by EPA personnel. This leaflet provides a summary of the fundamental policies and responsibilities which will help to ensure that EPA is getting what it pays for in a timely manner.



John C. Martin
Chairman, Committee on Integrity and
Management Improvement
U.S. Environmental Protection Agency

Who Is Responsible?

EPA must rely on qualified personnel who have received the necessary training to perform this important function. Contracting Officers (COs), including On-Scene Coordinators, have authority to enter into, administer, or terminate contracts and make related determinations. They are represented by a team of Project Officers, Work Assignment Managers, and/or Delivery Order Project Officers who collectively monitor the contractor's performance.

Project Officers serve as the CO's primary technical representatives on the EPA Team and as the main points of contact with the CO and the contractor's project manager. Their duties can include preparing/reviewing the procurement package used to order work, monitoring performance, and reviewing vouchers. Work Assignment

Managers and Delivery Order Project Officers are responsible for specific portions of the work and report to the Project Officer.

The Team is often the eyes and ears of the CO and, as such, must be aware of the responsibility for determining whether the work performed is exactly in accordance with the terms of the contract. History has shown that when the EPA Team does not or cannot devote adequate time to determine what is actually being done under the contract, the ability to achieve Agency objectives is adversely impacted.

Duties Of The EPA Team

To ensure effective contract monitoring, the Team should be concerned with the contractor's performance in the following areas:

- delivery of the specific items or services called for in the contract;
- good quality products and/or service delivered timely; and
- performance within the budget.

1. Assuring Effective and Efficient Performance.

In many types of contracts, the description of work is broad and general, allowing the contractor to satisfy the requirements in a number of ways. Use of work assignments or delivery orders with specific statements of work helps to assure the desired performance. The EPA Team should define as precisely as possible the attributes of the desired product or services and ensure that the contractor has a clear understanding of the terms and conditions of the contract and all work assignments.

2. Assuring Quality.

Contracts for supplies can usually specify the attributes that will result in an acceptable product. Contracts for services should also include acceptability criteria, where possible. Often, however, contracts for services, particularly those involving creative or analytical work, cannot describe specific attributes of the final results. Quality control in service contracts can be provided by monitoring both the methods used by the contractor as work progresses and the type and qualifications of the personnel assigned to the work.

The quality of analysis depends on the methods used. The validity of the conclusions may be suspect if the contractor fails to take into account all data or relevant factors. Interim conclusions that are suspect may seriously undermine all follow-on efforts, resulting in a

waste of resources and possibly requiring work to be redone or a new contract established.

The quality of the output is dependent, in large part, upon the competence of the contractor's personnel. In many cases, the best way to assure quality is to assure that the contractor's assigned personnel have the necessary capabilities, qualifications, and experience. The resumes of key contractor personnel should be reviewed to ensure that their experience and qualifications comply with the terms and conditions of the contract. This is particularly true for contracts calling for creative or conceptual development or analysis. The bottom line is that the EPA Team must work to ensure a high quality product but not act, or appear to act, as an employee of the contractor.

The EPA Team should also be involved in evaluating the need for consultants or subcontractors and the reasonableness of their estimates. The EPA Team may ask the contractor to provide information about the qualifications and experience of consultants or subcontractors and is entitled to inspect the subcontractor's facility and work process. **However, EPA personnel should not approve or attempt to influence the selection of a particular consultant or subcontractor.**

3. Assuring Timeliness of Performance.

Failure to deliver on time is almost always the result of a build-up of factors during performance. If the EPA Team keeps in close touch with the progress of the contractor's work effort, such interim delays can be identified and corrective action initiated. EPA depends on the Team to obtain and analyze progress information and, when necessary, to develop a recommended course of action so that deadlines can be met.

4. Monitoring Expenditures.

A firm fixed-price contract gives the contractor a great deal of incentive to perform the contract in the most economical way, since every penny saved is profit. Therefore, close monitoring of individual expenditures under firm fixed-price contracts is not needed. However, under cost-reimbursement type contracts, the contractor is generally entitled to compensation for costs incurred in doing the work, provided costs are allowable, allocable, and reasonable. Additionally, the work description may, out of necessity, lack specific performance criteria. For example, because of the difficulty in describing just what needs to be done, certain contracts require the contractor to provide hours of service, with specific deliverables to be identified later.

Under a cost-reimbursement contract, services or products of poor quality will likely necessitate additional expenditures to achieve the desired results. Monitoring cost-reimbursement contracts is perhaps the most challenging task faced by the EPA Team.

Reviewing the contractor's progress reports and invoices is a very effective means of monitoring cost-reimbursement contracts. The contractor may be asked for additional information to determine if the charges are reasonable, allowable, and allocable. If the EPA Team believes the contractor is spending more than is reasonably required to accomplish certain portions of the work, the Team should ask for additional explanation of, or support for, those costs. If information furnished substantiates the expenditure, yet it is believed there is a better, more efficient method to accomplish the work, the Project Officer should discuss the matter with the contractor's project manager, and if necessary, consult with the Contracting Officer. If the information furnished does not substantiate the invoiced amounts, involves costs which are expressly unallowable per the Federal Acquisition Regulation, or relates to other conditions which raise serious questions as to why a cost has been claimed, the Project Officer should discuss the matter with the contractor's project manager, Contracting Officer, or the Office of Inspector General (OIG), as appropriate. While honest mistakes can be made, the EPA Team should always be alert for indications of possible fraudulent activity.

If the EPA Team suspects or uncovers possible fraudulent activity, the Team should contact the Office of Inspector General to determine an appropriate course of action. No attempt should be made to contact the contractor.

How To Look For It

1. Determine the Contractor's Obligations.

The contract should be reviewed to determine the contractor's obligations as reflected in the statement of work and relevant contract clauses. In some contracts, task orders (e.g., delivery orders) are used to initiate contract performance. The EPA Team must have a sound understanding of each task order so that all of the contractor's obligations can be monitored.

The EPA Team must keep track of all change orders issued by the CO under the Changes clause of the contract. These documents change the description of work to be done and, accordingly, what is required of the contractor. The contractor's responsibilities should be

discussed with the contractor's project manager who is responsible for ensuring that contractor employees understand the terms and conditions of the contract.

2. Learn and Monitor What the Contractor Is Doing.

The EPA Team must know what the contractor is actually doing and planning to do. Described below are activities which will enable the EPA Team to determine how well the contractor is performing.

- a. The Post-Award Orientation Conference is very useful for reviewing the contract terms, determining what the contractor plans to do, avoiding any misunderstanding of the contractor's obligations, and understanding what is expected by the Government.
- b. The contractor's work plan should be reviewed to see that it is submitted when required and effectively describes the work to be done to accomplish the statement of work. If the contract does not require a work plan, and the EPA Team believes one is important, the Contracting Officer should be consulted about requiring a plan. Work plans can be key tools in monitoring a contractor's performance.
- c. The contractor's written progress reports are, or should be, a significant help in providing information on the contractor's work progress. The EPA Team is responsible for ensuring that the contractor complies with reporting provisions. When reports are part of a contract, they are included in the contract price or cost. Accordingly, the EPA Team should ensure that the Government gets the required reports in the time frames provided for and in the detail required. The EPA Team must be aware of its responsibility to verify what is said in the reports, especially if the reports are written in general terms. To monitor the accuracy of these reports, interim products such as copies of designs, results, drafts or other data should be required. Requesting specific deliverables facilitates this process.
- d. The EPA Team has the right to inspect and test work performed under the contract. This is standard under Government contracts and derived from the concept that the Government has the right to determine if the goods or services offered are what was ordered. This right can be exercised at any stage and place of work performance. Inspection of the contractor's work involves the use of spot checks, scheduled inspections, random sampling, user reports, and periodic review of the contractor's quality

assurance and control program. If formal on-site inspections are to be done, they should be specified in the contract.

3. Take Appropriate Action to Enforce Any Contract Requirement Not Being Met.

- a. When the EPA Team discovers that the contractor is not meeting a specific contract or work assignment requirement, the Project Officer should notify the Contracting Officer and the contractor's project manager and seek a voluntary commitment by the contractor to take remedial action. In such a case, the EPA Team will need to follow up to ensure that remedial action is taken. Again, where fraudulent activity is suspected or identified, you should contact the Office of Inspector General.
- b. In cases where the contractor disputes the discrepancy, claiming the requirements of the contract are being met, the EPA Team should analyze the contractor's justification. At the same time, the Contracting Officer must be kept informed of the situation. If the contractor persists, the Project Officer should inform the Contracting Officer in writing.
- c. The EPA Team's primary job is to help ensure that the contractor performs what the contract requires. **Team members are not authorized to make any changes under the contract which alter, in any way, the requirements of the contract or the contract price, terms, or conditions.** If the contractor refuses to comply, or asserts that the direction is without authority, the matter must immediately be referred to the Contracting Officer.

Common Pitfalls To Avoid

1. Inherently Governmental Functions.

Care must be taken to avoid requiring contractors to perform activities which are "inherently governmental functions." These activities are so closely related to the public interest that they must be performed by Federal employees. Activities, such as the determination of Agency policy and preparation of contract documents used to assign work, are "inherently governmental." Questions concerning whether or not an activity may be performed by a contractor should be directed to the Contracting Officer or to the Office of Acquisition Management's Procurement Policy Branch.

2. Personal Service Relationships.

In monitoring the contractor's work effort, the EPA Team should ensure that all formal communications are made to the contractor's project manager. Team members should not attempt to instruct, supervise, or control a contractor's employees.

Conclusion

The EPA Team must ensure that a contractor delivers a quality product or service in the time frames required by the contract. This can be accomplished through contract monitoring, which is based on good business practices, legal doctrines, common sense, and contractual authority. The single most important task is to continuously stay knowledgeable about what the contractor is doing. If an EPA Team member becomes aware of or suspects any fraud, waste, or abuse by a contractor, the Project Officer should notify the Contracting Officer and either the OIG in Headquarters or the nearest Divisional Office of Inspector General. A telephone Hotline number to the OIG is also available: (202) 260-4977. Information is confidential.

As a step towards pollution prevention, one copy of this bulletin will be printed for every five employees. This publication is also available via the Agency LAN Services Menu under "Information Services"; CIMI-Prevention of Fraud, Waste and Abuse.