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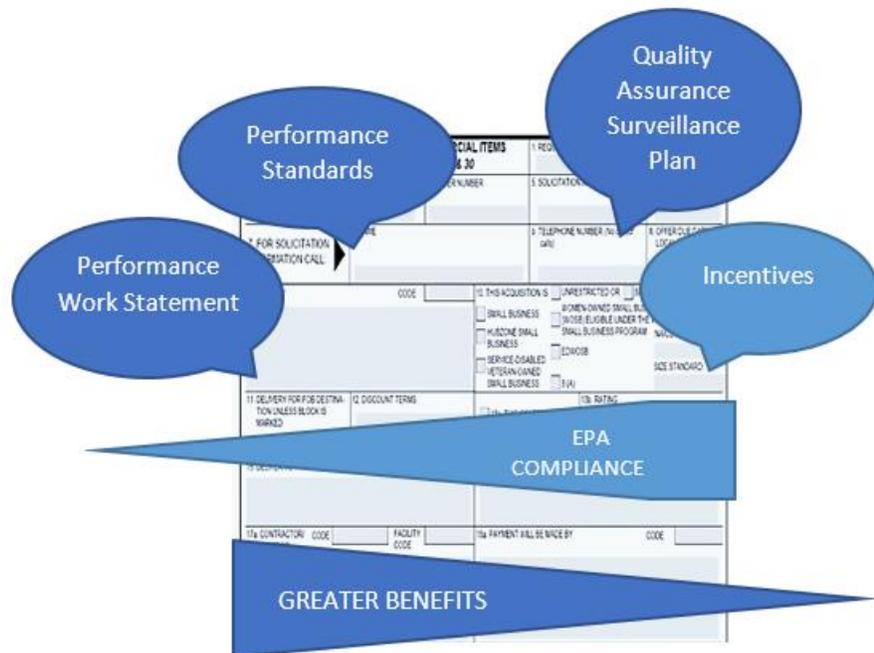


*Operating efficiently and effectively*

# EPA Can Achieve Better Value by Complying With Performance-Based Contract Requirements

Report No. 18-P-0089

February 20, 2018



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## Abbreviations

CMAT	Contract Management Advisory Team
CPARS	Contractor Performance Assessment Reporting System
EPA	U.S. Environmental Protection Agency
EPAAR	EPA Acquisition Regulation
FAR	Federal Acquisition Regulation
OAM	Office of Acquisition Management
OIG	Office of Inspector General
U.S.C.	United States Code

**Cover image:** The image depicts potential benefits of performance-based contracts.  
(U.S. General Services Administration and EPA OIG images)

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# At a Glance

## Why We Did This Audit

We conducted this audit to determine whether the U.S. Environmental Protection Agency's (EPA's) performance-based contract methods and procedures are being effectively performed in accordance with acquisition requirements.

Over a 3-year period, the EPA awarded over \$4 billion dollars in performance-based contracts. These contracts attempt to achieve better value and enhanced performance.

Performance-based contracts focus on the results to be achieved instead of how the work is to be performed. These contracts are managed in accordance with the Federal Acquisition Regulation (FAR), the EPA Acquisition Regulation (EPAAR), and the EPA Acquisition Guide.

### This report addresses the following:

- *Operating efficiently and effectively.*

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Listing of [OIG reports](#).

## EPA Can Achieve Better Value by Complying With Performance-Based Contract Requirements

### What We Found

We found that EPA performance-based contract methods and procedures were not being performed in accordance with FAR, EPAAR, and EPA Acquisition Guide requirements. Specifically, the EPA did not do the following:

- Correctly identify performance-based contracts in the EPA Acquisition System.
- Include required elements in quality assurance surveillance plans.
- Identify disincentives based on the FAR.
- Document contractor performance.

**Over \$290 million awarded in performance-based contracts could have been put to better use if the EPA had not granted award terms for less-than-superior service. Over \$75 million could be put to better use if the EPA required superior service in its award term contract language.**

We also found that the EPA did not perform the following requirements for performance-based contracts with award term incentives:

- Include the required quality assurance surveillance plans.
- Grant award term incentives in accordance with EPAAR.
- Include the required EPAAR award language for superior performance in the contract.
- Include the EPAAR general clause language and numbering system in the contract.

These conditions existed due to a combination of insufficient training and policy and procedure implementation. As a result, the EPA may not be obtaining better value and enhanced performance from using performance-based contracts.

### Recommendations and Planned Agency Corrective Actions

This report makes 15 recommendations to the Assistant Administrator for Administration and Resources Management. Most of our recommendations require actions to improve policy and procedure, and require that training be provided on the requirements associated with performance-based acquisition and award term incentives.

The EPA agreed with 14 of the 15 recommendations. We consider the agency's planned corrective actions and completion dates for Recommendations 1 through 14 to be acceptable for meeting the intent of the recommendations. Recommendation 15 remains unresolved.



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

THE INSPECTOR GENERAL

February 20, 2018

**MEMORANDUM**

**SUBJECT:** EPA Can Achieve Better Value by Complying With Performance-Based Contract Requirements  
Report No. 18-P-0089

**FROM:** Arthur A. Elkins Jr.

A handwritten signature in black ink, appearing to read "Arthur A. Elkins Jr.", is written over the printed name.

**TO:** Donna Vizian, Principal Deputy Assistant Administrator  
Office of Administration and Resources Management

This is our report on the subject audit conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). The project number for this audit was OA-FY16-0209. This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

**Action Required**

In accordance with EPA Manual 2750, your office provided planned corrective actions and completion dates in response to OIG Recommendations 1 through 14. Those recommendations are considered resolved but remain open pending implementation of the corrective actions.

The EPA did not concur with Recommendation 15. While the EPA did provide proposed alternative corrective actions, it did not provide a completion date for any actions. To resolve remaining concerns, as instructed by EPA Manual 2750, the EPA is to provide a written response to include an estimated completion date for Recommendation 15 within 60 days of the issuance of the final report.

We will post this report to our website at [www.epa.gov/oig](http://www.epa.gov/oig).

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# Chapter 1

## Introduction

### Purpose

The Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA) conducted this audit to determine whether the EPA's performance-based contract methods and procedures are being effectively performed in accordance with acquisition requirements.

### Background

Under performance-based acquisitions, the EPA awards contracts that focus on the results to be achieved instead of how the work is to be performed. The Federal Acquisition Regulation (FAR) Part 37 requires the use of performance-based acquisitions for services to the maximum extent practicable.<sup>1</sup> Examples of performance-based service acquisition benefits include the following:

- Increased chances of meeting mission needs.<sup>2</sup>
- Focus on intended results, not process descriptions and detailed specifications.
- Better value and enhanced performance.
- Less performance risk.
- Less frequent but more meaningful surveillance.

For the period of October 2013 through June 2016, nearly a 3-year period, the EPA's Office of Acquisition Management (OAM) awarded performance-based contracts collectively valued at approximately \$4.8 billion. Performance-based acquisitions use a performance work statement or statement of objectives, measure and manage performance applying quality assurance standards, and use incentives where appropriate. The government performs surveillance, which includes the information management systems, samplings, inspections and customer feedback methods to determine whether a contractor exceeds, meets or does not meet performance standards. Incentives can be based on an award fee used to reward excellent performance, or include a remedy for poor performance. Incentives also can be nonmonetary and based on extending the period of performance, or include nonperformance remedies.

Award term incentives have been utilized in the government since 1997, but have not been described in the FAR. Award term incentives are modeled after the

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<sup>1</sup> These requirements do not apply to architect/engineer services acquired in accordance with 40 U.S.C. 1101 et seq.; or to construction services, utility services, or services that are incidental to supply purchases.

<sup>2</sup> The EPA's mission is to protect human health and the environment

award fee incentive, but instead of rewarding a contractor's excellent performance with additional award fees, the contractor is rewarded with an extension of the contract period of performance. Award term incentives can also be used to reduce the length of a contract for poor performance.

## Responsible Offices

The EPA's Office of Administration and Resources Management, Office of Acquisition Management, is responsible for the issues in this report. OAM issues policies and procedures, manages operations, and supports the agency's procurement and contracts management program from contract planning through close-out.

## Scope and Methodology

We conducted this performance audit from June 2016 through October 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To obtain an understanding of contractual and acquisition requirements and internal controls, we reviewed the following documentation:

- Contract terms and conditions.
- FAR.
- EPA Acquisition Regulation (EPAAR).
- EPA Acquisition Guide.
- Other internal OAM guidance documents related to contract management.
- Prior audit reports relevant to our audit objectives.
- Internal control assessment reports from the Federal Managers' Financial Integrity Act, and the EPA's Contracts Management Assessment Program.
- Roles and responsibilities within the EPA's contract management structure.

The universe of performance-based contracts came from OAM and from the EPA Acquisition System. We judgmentally selected and reviewed 22 performance-based contracts<sup>3</sup> with high-dollar value (Appendix A). For background information on funding, we also accessed the EPA's Compass Data Warehouse, which is the EPA's accounting information system.

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<sup>3</sup> Eleven contracts in the sample have award term incentives.

In addition to reviewing acquisition requirements identified above for the selected contracts, we also did the following:

- Interviewed the Contracting Officer, Contracting Officer's Representatives, and other OAM staff.
- Obtained and reviewed quality assurance surveillance plans, performance work statements, documentation on contractor performance, award term decision letters, contract modifications, and other supporting documentation.

## Prior Reports

EPA OIG [Report No. 16-P-0078](#), *EPA's Background Investigation Support Contracts and OPM Billings Need Better Oversight and Internal Controls*, issued December 14, 2015, found that contractor incentive fees were paid without adequate evidence the contractor met quality assurance surveillance plan standards. The report also states that quality assurance surveillance plan performance standards are inadequate.

Report No. 16-P-0078 made 14 recommendations. The agency reports that corrective actions for all recommendations were completed as of October 26, 2016.

EPA OIG [Report No. 2003-P-00008](#), *EPA Could Increase Savings and Improve Quality Through Greater Use of Performance-Based Service Contracts*, issued March 31, 2003, found that the EPA has made limited use of performance-based service contracts. We found that the EPA awarded contracts that were not performance-based for services previously awarded as performance-based. Also, many contracts the EPA identified as performance-based were not designed to take advantage of performance-based service contract benefits.

Report No. 2003-P-00008 made seven recommendations. The agency reports that corrective actions for all recommendations were completed as of September 30, 2005.

## Chapter 2

### Improved Compliance Is Needed for Performance-Based Contracts

Improvements are needed to comply with performance-based contract requirements prescribed in the EPA Acquisition Guide and the FAR. Specifically, the EPA did not do the following:

- Correctly identify performance-based contracts in the EPA Acquisition System.
- Include the required quality assurance surveillance plan elements in the contracts, as required by the EPA Acquisition Guide and the FAR.
- Identify disincentives based on the FAR.
- Document contractor performance.

These conditions occurred due to a lack of training in specific performance-based contract requirements. Also, the EPA did not implement sufficient controls to check for compliance, and the EPA Acquisition Guide lacked sufficient acquisition requirements. As a result, users of performance-based contracts are not provided accurate and reliable information. In addition, the EPA cannot provide reasonable assurance that it is achieving the best results to meet the agency's needs.

#### Performance-Based Contracts Were Incorrectly Identified

The EPA Acquisition System provides an intranet-based system to support the EPA acquisition community. Buyers, contract specialists, and Contracting Officers throughout EPA headquarters and regions use the system to create and manage contracts. In the EPA Acquisition System, acquisitions are identified as performance-based contracts, in accordance with FAR Subpart 37.6. According to FAR 37.601(b), performance-based contracts for service shall include the following elements:

- A performance work statement.
- Measurable performance standards.
- Performance incentives, where appropriate.

The FAR also specifies that a quality assurance surveillance plan is required. Per FAR 37.604, the government may prepare the quality assurance surveillance plan or require offerors to submit a proposed plan for the government's consideration.

The EPA incorrectly identified three of the 22 contracts we reviewed as performance-based contracts in the EPA Acquisition System. Contracts EPC15005, EPW11019 and EPW13005, collectively valued at approximately \$107 million, were identified in the system as being performance-based contracts. However, the contracts were missing the required performance work statement, performance standards, incentives, and a quality assurance surveillance plan. The EPA's acquisition staff confirmed those contracts are not performance-based contracts.

### ***Improvements Needed in Quality Controls***

The FAR, the EPA Acquisition Guide, and the EPA Contracts Management Manual<sup>4</sup> emphasize that acquisition officials use performance-based contracts to the maximum extent practicable. Based on our review of the EPA Acquisition Guide, and the EPA Acquisition System Manual, we did not find sufficient quality controls for checking the accurate identification of contracts as performance-based contracts in the EPA Acquisition System. The Office of Management and Budget cover memo, dated May 21, 2008, and titled *Conducting Acquisition Assessments under OMB Circular A-123*, Appendix 1, emphasizes that agencies beware of transaction data that are not regularly monitored for accuracy and/or completeness.

### ***Unreliability of Performance-Based Contract Data***

Users of the EPA Acquisition System are relying on inaccurate identification of contracts as performance-based contracts, which could affect management decisions. Furthermore, the EPA Acquisition System feeds data into the Federal Procurement Data System-Next Generation, whose users also rely on the information. The use of Federal Procurement Data System-Next Generation data provides a basis for recurring and special reports to the President, Congress, the Government Accountability Office, federal executive agencies, and the public.

### ***Recommendations***

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

1. Perform a periodic review of contracts in the EPA Acquisition System to verify they are accurately identified as performance-based contracts per federal acquisition requirements.
2. Require Contracting Officers to correct all contracts erroneously recorded as performance-based contracts in the EPA Acquisition System.

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<sup>4</sup> Even though the EPA's Contracts Management Manual was also applicable to certain contracts reviewed, the manual was replaced with the EPA Acquisition Guide in October 2014.

## Agency Response and OIG Evaluation

The EPA agreed with Recommendations 1 and 2, and provided planned corrective actions for both recommendations. For Recommendation 1, the EPA will review the accuracy of EPA Acquisition System contracts and verify they are accurately identified as performance-based contracts per the FAR. For Recommendation 2, the EPA will require the correction of all contracts erroneously recorded as performance-based contracts in the EPA Acquisition System. The EPA provided an estimated completion date of March 15, 2018, for both corrective actions.

### Some Contracts Were Missing Required FAR and EPA Acquisition Guide Quality Assurance Elements

The FAR has specific elements that are required for quality assurance:

- The plans should specify the method of surveillance [FAR 46.401(a)(2)].
- Each contract shall designate the place(s) where the government reserves the right to perform quality assurance [FAR 46.401(b)].

Per the EPA Acquisition Guide 37.6.1.9(c), effective October 2014, the following elements, among others, are required in a quality assurance surveillance plan:

- Purpose.
- Methods of surveillance.

As noted in Table 1, some performance-based contracts were missing one or more of the required EPA Acquisition Guide and FAR elements for quality assurance.

**Table 1: Contracts missing EPA Acquisition Guide and FAR quality assurance elements**

Contract	Award date	Missing element
EPC15012	6/29/2015	Purpose and places of quality assurance
EPG15H0113 <sup>a</sup>	4/27/2015	Places of quality assurance
EPC15008	3/20/2015	Purpose and methods of surveillance

Source: OIG analysis.

Note: <sup>a</sup> This EPA order number is placed with contract number HHSN316201200117W.

The EPA did not provide training specific to EPA Acquisition Guide performance-based methods and the required quality assurance elements. Some EPA staff did not seem to be aware of the EPA Acquisition Guide.

The FAR requires the place of performance be identified for contracts. This requirement was not followed because the EPA Acquisition Guide states that the place of performance should be identified when applicable. Additionally, there does not appear to be sufficient quality control and/or verification that the quality assurance surveillance plans contain the required EPA Acquisition Guide or FAR elements.

The quality assurance surveillance plan is the key government-developed surveillance process used for managing contractor performance assessment. The plan ensures that systematic quality assurance methods validate that contractor quality control efforts are timely, effective and delivering the results specified in the contract or task order. As a result, if key EPA Acquisition Guide and FAR required elements are missing from the plan, the EPA cannot review contractor performance and cannot provide reasonable assurance that the contractor is effectively meeting contract requirements. Contracts missing required elements were collectively valued at approximately \$156 million.

The EPA also may not have an effective overall strategy that explains the purpose of the quality assurance surveillance plan; staff may not be clear of their roles and responsibilities; and the method of surveillance and places may not be clear, especially to newly reassigned staff.

### ***Recommendations***

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

3. Require Contracting Officers to modify quality assurance surveillance plans for contracts EPC15012, EPG15H0113 and EPC15008 to include missing elements required by the Federal Acquisition Regulation and the EPA Acquisition Guide.
4. Provide specific performance-based contract training that includes quality assurance surveillance plan elements required by the Federal Acquisition Regulation and the EPA Acquisition Guide.
5. Perform periodic reviews of quality assurance surveillance plans to verify the inclusion of the Federal Acquisition Regulation and the EPA Acquisition Guide requirements.
6. Update the EPA Acquisition Guide to include the Federal Acquisition Regulation requirement to identify places of quality assurance.

## ***Agency Response and OIG Evaluation***

For Recommendations 3, 4, 5 and 6, the EPA either provided planned corrective actions that meet the intent of the recommendation, or it provided acceptable alternative corrective actions.

The EPA agreed with Recommendation 3 and indicated the agency would collaborate with the cognizant contracting office(s) to review quality assurance surveillance plans for the contracts cited, and complete warranted modifications to the plans to assure compliance with FAR and EPA Acquisition Guide requirements. We met with EPA representatives on December 6, 2017, to obtain further clarification of the agency's response to this recommendation. The EPA representatives indicated the agency intends to make required changes to the quality assurance surveillance plans for the three contracts. The EPA provided an estimated completion date of January 30, 2018.

The EPA did not agree with Recommendation 4 because the EPA already provided training. The EPA provided an alternative planned action that we believe meets the intent of the recommendation. The EPA will periodically publish recommended available performance-based contracts training for Contracting Officers and Contracting Officer's Representatives, and express the importance of improving and updating knowledge and skills in this area. On-the-job training, information exchange sessions, mentoring and other knowledge transfer mechanisms will be used to reinforce and supplement classroom learning. Finally, to verify sound practices in this area, future reviews by the EPA's Contract Management Advisory Team (CMAT) will make performance-based acquisition and performance-based service contract documentation a priority. The EPA provided an estimated completion date of January 30, 2018.

For Recommendation 5, the EPA will enhance oversight and enforcement of compliance with FAR and EPA Acquisition Guide requirements specific to quality assurance surveillance plans, through the agency's existing Performance Measurement and Management System internal assessment process. Also, future CMAT reviews will make performance-based contract documentation a priority. The EPA provided an estimated completion date of March 15, 2018.

For Recommendation 6, the EPA agreed to update the EPA Acquisition Guide to include the FAR requirement to identify place(s) to perform quality assurance. The agency provided an estimated completion date of May 30, 2018.

## Identifying Disincentives Needs to Improve

The FAR implements requirements for contracts with incentives. Per FAR 16.401(a)(2)(i), incentive contracts include appropriate incentive arrangements designed to motivate contractor efforts that might not otherwise be emphasized. FAR 16.402-2(b) states the following:

To the maximum extent practicable, positive and negative performance incentives shall be considered in connection with service contracts for performance of objectively measurable tasks when quality of performance is critical and incentives are likely to motivate the contractor.

We found that some of the EPA's disincentives used were not effective because they were already contract requirements. Three contracts (EPD15003, EPC15012 and EPG15H0113) identified disincentives in their quality assurance surveillance plans. The disincentives included in their plans stated that the EPA will report unsatisfactory ratings in the Contractor Performance Assessment Reporting System (CPARS). However, this reporting is already a contract requirement.

FAR 42.1502(a) requires past performance evaluations to be prepared at least annually, and to be entered in CPARS. Thus, the disincentives are not likely to motivate the contractor to perform better because the requirements are already in the contracts.

### ***Insufficient Guidance***

The EPA Acquisition Guide does not discuss the FAR requirement that incentives, both positive and negative (also known as disincentives), should be designed to motivate contractor efforts that might not otherwise be emphasized in the contract. However, the EPA's Contracts Management Manual 37.1.5.2(B), which was superseded by the EPA Acquisition Guide in fiscal year 2014, stated that any incentives must be in addition to existing requirements. The Contracts Management Manual provided that rating a contractor in the National Institutes of Health Contractor Performance System<sup>5</sup>, in and of itself, would not qualify as an incentive. In addition, the EPA Acquisition Guide provides direction regarding positive versus negative incentives by stating: "At EPA, when incentives are used, they must be positive. Negative incentives are generally punitive in nature and thus not enforceable by law." This contradicts FAR 16.402-2(b), as discussed above, which requires considering the use of both positive and negative incentives to the maximum extent practicable.

The EPA Acquisition Guide states that the CPARS is a valid use of incentives; however, reporting CPARS results is already a FAR requirement. FAR

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<sup>5</sup> The National Institutes of Health Contractor Performance System was used by most federal civilian agencies and stopped operating on September 30, 2010. Agencies have been directed to use the CPARS.

42.1502(a) requires past performance evaluations to be prepared at least annually, and to be entered into the CPARS. Consequently, the disincentive to report unsatisfactory ratings is not likely to motivate the contractor to perform better because the requirements are already in the contracts. In addition, since the reporting of CPARS evaluations are required by all contracts over the acquisition threshold amount, using EPA methods to identify disincentives would also allow those contracts to be incentive contracts as well. As a result, the EPA is not providing additional methods to effectively motivate the contractor to perform work above satisfactory service, and the agency may be losing out on potential savings or better service. Also, the EPA may not be achieving greater efficiencies by not motivating contractors to improve contract results.

### ***Recommendation***

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

7. Update the EPA Acquisition Guide to include the requirement to identify incentives and disincentives designed to motivate contractors, and that are not already required by the Federal Acquisition Regulation.

### ***Agency Response and OIG Evaluation***

The EPA agreed with Recommendation 7 and will update the EPA Acquisition Guide to be consistent with the FAR. The EPA provided an estimated completion date of May 30, 2018.

## **Documenting Contractor Performance Needs to Improve**

The FAR and the EPA Acquisition Guide establish requirements for documenting contractor performance. FAR 46.101 defines government contract quality assurance as “the various functions, including inspection, performed by the Government to determine whether a contractor has fulfilled the contract obligations pertaining to quality and quantity.” FAR 4.803(b) identifies quality assurance records as examples of documents normally contained in the contract administrative office file. The EPA Acquisition Guide 37.6.1.9(c)8 requires the quality assurance surveillance plan to have a method of documenting contractor performance.

In the case of four of the 22 contracts reviewed, the EPA did not implement an effective surveillance method that documents results as required by the EPA Acquisition Guide and the FAR. Table 2 summarizes the contracts that did not document contractor performance and the potential issue.

**Table 2: Contracts without documented contractor performance**

<b>Contract</b>	<b>Award date</b>	<b>Potential issue</b>	<b>Applicable criteria</b>
EPS21502	5/13/2015	The method of overseeing the actual performance of select requirements at acceptable quality levels is based on the Contracting Officer's Representative memory of what happened during a month versus actual recorded documentation.	EPA Acquisition Guide 37.6.1.9(c) 8 and FAR 4.803
EPS41403	9/26/2014	The Contracting Officer and the Contracting Officer's Representative did not maintain their quality assurance forms as required by the quality assurance surveillance plan.	FAR 4.803
EPS71206	9/26/2012	The Contracting Officer's Representative observed performance but did not prepare documentation at the time of the on-site surveillance of performance.	FAR 4.803
EPS71208	9/27/2012	The Contracting Officer's Representative observed performance but did not prepare documentation at the time of the on-site surveillance of performance.	FAR 4.803

Source: OIG analysis.

For contract EPS21502, the quality assurance surveillance plan required documentation that uses the monthly task order versus a system that documents the timeliness of when the services occurred. This resulted in the Contracting Officer's Representative having to rely on memory for the entire month to document timely emergency responses. For contract EPS41403, EPA officials stated that with the many office changes, officials did not maintain their documentation in contract files. For contracts EPS71206 and EPS71208, the quality assurance surveillance plan discussed using observation; however, the plan did not require documenting the observation.

### ***Inattention to Details***

The EPA Acquisition Guide provides direction to document contractor performance. In our opinion, the degree of the documentation needed is also important for determining how successful contractor performance is monitored. The EPA did not document contractor performance due to an inattention to detail in the quality assurance surveillance plan and in the contract files.

As a result, the EPA cannot provide assurance that contractors are meeting contract requirements for contracts collectively valued at approximately \$230 million.

### ***Recommendation***

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

8. Establish a method to confirm or certify that acquisition officials are sufficiently documenting required surveillance methods for all contracts.

### ***Agency Response and OIG Evaluation***

The EPA agreed with Recommendation 8 and will establish a method to confirm the adequacy of surveillance documentation, and the CMAT will review the documentation of surveillance methods. The EPA provided an estimated completion date of April 30, 2018.

## **Chapter 3**

### **Improved Compliance Is Needed for Award Term Incentives**

Award term incentives within performance-based contracts did not comply with FAR and EPAAR requirements. Specifically, the EPA did not do the following:

- Include the required quality assurance surveillance plan per FAR requirements.
- Grant award term incentives with superior performance per EPAAR requirements.
- Include required EPAAR award language for superior performance in the contract.
- Include EPAAR and other general clause language, and a numbering system in the contract.

These conditions occurred due to insufficient training on using award term incentives and their requirements. We also found that the EPA Acquisition Guide did not provide sufficient requirements for contracts with award term incentives. As a result of our review of 11 EPA performance-based contracts with award terms, the EPA cannot provide assurance that contract award term incentives valued at over \$370 million are being put to better use to achieve enhanced performance.

#### **Award Term Contracts Did Not Include the Required Quality Assurance Surveillance Plan**

The FAR identifies requirements for quality assurance surveillance plans for all performance-based contracts, but the FAR does not discuss specific requirements for contracts with award term incentives that are also categorized as performance-based contracts. Per FAR 37.604, the government may prepare the quality assurance surveillance plan or require the offerors to submit a proposed plan for the government's consideration when developing a government plan.

Four of the 11 award term contracts reviewed did not have a quality assurance surveillance plan as required by the FAR. The contracts were EPS71307, EPS90803, EPW0931 and EPS91401. The quality assurance surveillance plan identifies all work requiring surveillance, a surveillance method, performance standards, and, if applicable, the acceptable quality levels.

Some EPA staff thought it was acceptable to replace the quality assurance surveillance plan with the award term incentive plan. There are no policies or other procedures that emphasize the need for both a quality assurance surveillance

plan and an award term incentive plan. The FAR requires the use of a quality assurance surveillance plan and does not discuss using the award term incentive plan. The EPAAR requires the use of an award term incentive plan and does not require the use of a quality assurance surveillance plan.

Implemented in October 2014, EPA Acquisition Guide 37.6.1.9(a) requires the use of only a quality assurance surveillance plan. The EPA's Contracts Management Manual 37.1.5.2(a), a predecessor of the EPA Acquisition Guide, did not require the use of a quality assurance surveillance plan. Overall, some staff seemed unaware of the requirements to include both the quality assurance surveillance plan and the award term incentive plan. As a result, the EPA cannot provide assurance that environmental services conform to contract requirements.

### ***Recommendations***

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

9. Update the EPA Acquisition Guide to require both a quality assurance surveillance plan and an award term incentive plan for award term contracts.
10. Develop a method to verify that acquisition officials have a quality assurance surveillance plan and an award term incentive plan for award term contracts.

### ***Agency Response and OIG Evaluation***

The EPA agreed with Recommendations 9 and 10. For Recommendation 9, the EPA agreed to update and publish a requirement to include both a quality assurance surveillance plan and an award term incentive plan for award term contracts. For Recommendation 10, future CMAT reviews will make such required documentation a focal point. The EPA provided an estimated completion date of May 30, 2018, for both corrective actions.

## **Award Term Incentives Granted With Less-Than-Superior Service**

The EPAAR addresses requirements for award term incentive contracts. Just like award-fee incentive contracts where a contract effectively motivates the contractor toward enhanced performance, award term incentives are designed to motivate contractors to superior performance. The prescribed performance measures (i.e., acceptable quality levels) that a contractor must achieve to become eligible for an award typically exceeds the acceptable quality levels necessary for government acceptance of contract deliverables (EPAAR 1516.401-70). Per EPAAR 1552.216-78 (d), the contractor must achieve all acceptable quality levels for the evaluated tasks, both individual and aggregate, for that evaluation period

in order to be eligible for an award term incentive period.<sup>6</sup> Also, per this EPAAR, the contractor cannot be eligible for the associated award term incentive period if the contractor failed to achieve any acceptable quality level. The government has the unilateral right not to grant the award term incentive periods if the contractor has failed to achieve the performance measures for the corresponding evaluation period [EPAAR 1552.216-77(c)(1)(ii)]. Also, when an award term incentive period is not granted, any subsequent award term incentive periods are thereby also cancelled.

### ***Noncompliance With the Exercising of Award Terms***

For three contracts (EPS91401, EPW09031 and EPS90803) out of 11 award term contracts reviewed, the EPA granted award terms that did not comply with contract and EPAAR performance requirements because the contractor performance rating used for the award term was for less-than-superior service. Table 3 summarizes the results.

**Table 3: Contract award term incentive**

<b>Contract</b>	<b>Award term requirement</b>	<b>Performance</b>
EPS91401	The contract states the contractor must receive an excellent rating (4.0 and above).  To be eligible for an award term incentive period, the contractor must achieve all acceptable quality levels for the evaluated tasks, both individual and aggregate, for that evaluation period. Failure to achieve any acceptable quality level renders the contractor ineligible for the associated award term incentive period.	The contractor received a 3.91 rating in the first year, and a 3.75 rating at 1.5 years. The overall score from the evaluation was 3.83.  Several individual ratings for the rating period received a 2.0 ("fair") rating, which did not achieve the acceptable quality level.
EPW0931	According to the contract, if the contractor receives an average performance evaluation score of 4.0 to 5.0, the contractor may be awarded an award term.	Award terms I and II were awarded with at least one of the six elements receiving a satisfactory service rating, which brought the overall ratings below a 4.0.
EPS90803	According to the contract, the contractor must achieve an overall rating of "excellent" or higher to be eligible to earn an award term.	For three award term periods, the contractor's performance received a "good" rating.

Source: OIG analysis.

The EPA did not provide training for award term actions. Also, the EPA Acquisition Guide does not discuss the procedures for exercising award terms based on a contract requiring superior service as stated in the EPAAR.

<sup>6</sup> An award term incentive period of performance is calculated in months, for example 24 months or 36 months.

### **Missed Benefits**

The EPA could have put approximately \$297 million of award term incentive funds to better use by competing another contract that may have provided better environmental service and potentially better cost savings. In addition, the EPA may have missed better opportunities with other contractors during the solicitation phase if contractors had known they could have received an award term incentive with less-than-superior service. Table 4 summarizes the award term value.

**Table 4: Award term amount per contract**

<b>Contract</b>	<b>Award term amount</b>
EPS91401	\$136,793,797
EPW0931	\$50,607,221
EPS90803	\$109,246,055
<b>Total</b>	<b>\$296,647,073</b>

Source: OIG analysis.

### **Recommendation**

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

11. Establish procedures (via policy, guidance, checklists, training, etc.) requiring the EPA to grant an award term incentive for only superior service, per EPA Acquisition Regulation 1516.401-70 and contract requirements.

### **Agency Response and OIG Evaluation**

The EPA agreed with Recommendation 11 and provided planned corrective actions that meet the intent of the recommendation. The EPA will clarify the issue requiring the agency to grant an award term incentive for superior service, and review other affected agency policy documents for clarity and cohesiveness. The EPA provided an estimated completion date of July 30, 2018.

## **Contract Language for Award Terms Needs to Improve to Comply With EPAAR**

The EPAAR identifies the enhanced performance language needed in the contract for award term incentives. In the same manner that award-fee incentive contracts [FAR 16.401(e)] motivate contractors toward enhanced performance, EPAAR 1516.401-70 (b) states that award term incentives are designed to motivate contractors to superior performance. Prescribed performance measures or acceptable quality levels must be achieved by a contractor to become eligible for an award. Typically, the acceptable quality level will exceed the levels necessary for government acceptance of contract deliverables [EPAAR 1516.401-70(b)].

To be eligible for an award term incentive period, the contractor must achieve all acceptable quality levels for the evaluated tasks, both individual and aggregate, for that evaluation period. If the contractor failed to achieve any of the levels, the contractor cannot be eligible for the associated award term incentive period. EPAAR 1552.216-78 identifies Alternate 1, which permits the use of CPARS in place of the acceptable quality level rating system. CPARS uses a numerical rating system, and requires that a contractor attain an overall average rating of 4.0 to 5.0 in order to be eligible for an award term incentive.

### ***Noncompliance With Award Term Language***

Three of the 11 award term contracts reviewed (EPS21502, EPR21401 and EPW14022) did not comply with EPAAR requirements. Specifically, language in the contracts' award term incentive plans did not require contractors to meet all acceptable quality levels to receive an award term, or did not sufficiently require superior performance as prescribed by the EPAAR. Table 5 identifies the contracts' award term incentive plan noncompliance.

**Table 5: Noncompliance with award term incentive language**

<b>Contract</b>	<b>Criteria</b>	<b>Contract terms</b>	<b>Language issue</b>
EPS21502	The EPAAR requires all acceptable quality levels must be met.	The award term incentive plan states the contractor must meet 10 of the 11 acceptable quality levels to exercise an award term.	Did not require meeting 11 acceptable quality levels.
EPR21401	<p>The EPAAR emphasizes award term incentives are designed to motivate contractors to superior performance.</p> <p>The EPAAR requires EPA to describe the acceptable quality level for each task, and an overall level for the associated evaluation periods.</p>	<p>The award term incentive plan states that all acceptable quality levels must be met.</p> <p>In order to be eligible for an award term incentive period, the contractor must achieve all acceptable quality levels for the evaluated tasks, both individual and aggregate, for that evaluation period.</p>	<p>Even though the contract included clause language that all acceptable quality levels must be met, the contract is missing language motivating contractors to superior service.</p> <p>Even though the contract states that an individual and aggregate acceptable quality level is needed, the plan is missing the actual rating level. For example, the plan is missing, in the associated evaluation period, the acceptable quality level (<b>90 percent</b>) for each task and (<b>95 percent</b>) for the overall level.</p>
EPW14022	When CPARS is used to evaluate contractor performance, the EPAAR requires the contractor to attain a CPARS rating number of 4.0 to 5.0 in order for the contractor to be eligible for the award term periods.	The award term incentive plan states the contractor must achieve an average past performance score of no less than 3.0 for the 3-year base period of the contract, with 3.0 considered to be very good.	Incorrect numbering system identified.

Source: OIG analysis.

***Insufficient Guidance***

There appears to be a lack of knowledge regarding the award term requirements, and there is very limited information identified in the EPA Acquisition Guide on award term procedures required. Even though award term incentive requirements strive for superior service, and acceptable quality levels are typically exceeded, we believe that there are times when such actions cannot be achieved due to circumstances beyond contractor control. This should be assessed before

development of the award term incentive and during the evaluation period. The rationale should be documented to show an attempt to strive for enhanced performance. We also believe that additional internal controls via policy should require documenting a rationale for not striving for superior service, especially when conditions occur outside the contractor’s capability or control.

***Missed Opportunity to Achieve Greater Benefits***

With contract language not complying with EPAAR requirements, the agency may grant award term incentives, valued at approximately \$76 million, which do not provide exceptional environmental and non-environmental services. There is a missed opportunity for competition from other contractors that may provide better service. Table 6 summarizes the award term value for contracts with noncomplying clause language.

**Table 6: Award term value for contract**

<b>Contract</b>	<b>Award term amount</b>	<b>Comment</b>
EPS21502	\$65,401,833	Two award terms
EPR21401	\$8,078,915	Three award terms
EPW14022	\$3,012,292	One award term
<b>Total</b>	<b>\$76,493,040</b>	

Source: OIG analysis.

***Recommendation***

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

12. Modify contract language to comply with EPA Acquisition Regulation requirements.
13. Establish procedures (via checklists, training, etc.) for the development of award term incentive plans to comply with the EPA Acquisition Regulation requirements, unless rationale is documented that such excellent service is beyond the contractor’s capability or control.

***Agency Response and OIG Evaluation***

The EPA provided planned corrective actions and additional clarification that meet the intent of Recommendations 12 and 13. For both recommendations, we met with EPA representatives to obtain further clarification of the agency’s response.

For Recommendation 12, EPA representatives confirmed that the agency plans to review its related policy documents to ensure that the policies are consistent and clear. The EPA also plans to coordinate with its regional and other contracting divisions to determine and make appropriate contract modifications where value will be added given the available contract period of performance.

For Recommendation 13, EPA representatives confirmed that the agency intends to review policy and procedures, and work with its regional and other contracting divisions, to develop or revise procedures that deal with this recommendation. OAM staff emphasized the importance of documentation. The EPA provided an estimated completion date of July 30, 2018, for Recommendations 12 and 13.

## EPAAR Clause With Missing Language and Numbers

FAR 52.103 (a) provides that:

Whenever any FAR provision or clause is used without deviation in a solicitation or contract, whether it is incorporated by reference or in full text, it shall be identified by number, title, and date. This identification shall also be used if the FAR provision or clause is used with an authorized deviation, except that the contracting officer shall then insert “(DEVIATION)” after the date.

The EPAAR identifies general verbiage and contract clause numbers needed for award term incentives. The clauses found in EPAAR 1552.216-77 (Award Term Incentive), EPAAR 1552.216-78 (Award Term Incentive Plan), and EPAAR 1552.216-79 (Award Term Availability of Funds) are required per EPAAR 1516.406(c).

Three contracts did not include the specific award term EPAAR clause language or clause numbers. Table 7 identifies the missing requirements.

**Table 7: Contracts with missing EPAAR clause language and number**

<b>Contract</b>	<b>Missing clause</b>
EPS50905	Missing language and number for Clause 1552.216-79
EPS90803	Missing number for Clauses: 1552.216-77 1552.216-78 1552.216-79
EPS71307	Missing number for Clauses: 1552.216-77 1552.216-78 1552.216-79  Missing language for Clause 1552.216-79

Source: OIG analysis.

There appears to be a lack of knowledge about award term requirements, and there is very limited information identified in the EPA Acquisition Guide concerning the required award term procedures. By not having clear and required language,

contract users may not be aware of EPAAR-prescribed award term provisions needed to meet contract requirements.

### ***Recommendations***

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

14. Require Contracting Officers to modify contracts EPS50905, EPS90803 and EPS71307 to include the required missing clause language or numbers.
15. Update the EPA Acquisition Guide to require Contracting Officers include specific clause language and numbers for award term contracts.

### ***Agency Response and OIG Evaluation***

For Recommendation 14, the EPA provided a corrective action that meets the intent of the recommendation. The EPA's response indicated the agency will collaborate with the cognizant contracting office(s) to review the contracts cited, and to complete warranted modifications. We met with EPA representatives to obtain further clarification of their response to this recommendation. The representatives responded that the agency intends to make required changes to contract clauses for the three contracts. The EPA provided an estimated completion date for this corrective action of August 30, 2018.

The EPA does not concur with Recommendation 15 because the agency does not believe that a revision of the EPA Acquisition Guide is necessary to correct the issue. The agency indicated that the EPA Acquisition System contract writing system is programmed to provide all provision/clause titles and corresponding numbers, and full clause language when it is not incorporated by reference. It appears that the cognizant Contracting Officers manually "cut and pasted" the clauses into the contracts, and inadvertently left off some of the clause language and numbers. This issue appears to be a user error and/or quality control and oversight issue, which should be corrected through issuance of the appropriate bilateral modification.

We met with EPA representatives to obtain further clarification of the agency's response to this recommendation. EPA representatives reiterated that the system contains all of the correct clauses, but errors can occur when Contracting Officers are forced to work outside of the system. For example, in cases where the system is down for an extended period of time.

Contracts go through a review process; however, in the case of the three contracts, the OIG noted that management reviews did not identify or prevent the errors. We communicated to EPA representatives that our report noted there was a lack of

knowledge about award term requirements, and that there is very little information identified in the EPA Acquisition Guide concerning required award term procedures. While the EPA does not agree with modifying the EPA Acquisition Guide, we believe that some sort of guidance and/or procedures should be put in place to prevent future errors from occurring, especially when the EPA Acquisition System is not available.

As a result of our meeting and discussion, EPA representatives provided further information regarding corrective actions the agency would take to address Recommendation 15. Specifically, the EPA would work with OAM's Information Technology Service Center to help update the EPA Acquisition System desk guide to include procedures for emergency instances when the EPA Acquisition Writing System is not available for use. The EPA Acquisition System desk guide update can be issued via an Information Technology Service Center "hot tips" notice.

While these alternative corrective actions would be acceptable, the EPA did not provide a commitment to complete the actions or provide an estimated completion date. Recommendation 15 remains unresolved.

# **Status of Recommendations and Potential Monetary Benefits**

## RECOMMENDATIONS

Rec. No.	Page No.	Subject	Status <sup>1</sup>	Action Official	Planned Completion Date	Potential Monetary Benefits (in \$000s)
1	5	Perform a periodic review of contracts in the EPA Acquisition System to verify they are accurately identified as performance-based contracts per federal acquisition requirements.	R	Assistant Administrator for Administration and Resources Management	3/15/18	
2	5	Require Contracting Officers to correct all contracts erroneously recorded as performance-based contracts in the EPA Acquisition System.	R	Assistant Administrator for Administration and Resources Management	3/15/18	
3	7	Require Contracting Officers to modify quality assurance surveillance plans for contracts EPC15012, EPG15H0113 and EPC15008 to include missing elements required by the Federal Acquisition Regulation and the EPA Acquisition Guide.	R	Assistant Administrator for Administration and Resources Management	1/30/18	
4	7	Provide specific performance-based contract training that includes quality assurance surveillance plan elements required by the Federal Acquisition Regulation and the EPA Acquisition Guide.	R	Assistant Administrator for Administration and Resources Management	1/30/18	
5	7	Perform periodic reviews of quality assurance surveillance plans to verify the inclusion of the Federal Acquisition Regulation and the EPA Acquisition Guide requirements.	R	Assistant Administrator for Administration and Resources Management	3/15/18	
6	7	Update the EPA Acquisition Guide to include the Federal Acquisition Regulation requirement to identify places of quality assurance.	R	Assistant Administrator for Administration and Resources Management	5/30/18	
7	10	Update the EPA Acquisition Guide to include the requirement to identify incentives and disincentives designed to motivate contractors, and that are not already required by the Federal Acquisition Regulation.	R	Assistant Administrator for Administration and Resources Management	5/30/18	
8	12	Establish a method to confirm or certify that acquisition officials are sufficiently documenting required surveillance methods for all contracts.	R	Assistant Administrator for Administration and Resources Management	4/30/18	
9	14	Update the EPA Acquisition Guide to require both a quality assurance surveillance plan and an award term incentive plan for award term contracts.	R	Assistant Administrator for Administration and Resources Management	5/30/18	
10	14	Develop a method to verify that acquisition officials have a quality assurance surveillance plan and an award term incentive plan for award term contracts.	R	Assistant Administrator for Administration and Resources Management	5/30/18	
11	16	Establish procedures (via policy, guidance, checklists, training, etc.) requiring the EPA to grant an award term incentive for only superior service, per EPA Acquisition Regulation 1516.401-70 and contract requirements.	R	Assistant Administrator for Administration and Resources Management	7/30/18	\$296,647*
12	19	Modify contract language to comply with EPA Acquisition Regulation requirements.	R	Assistant Administrator for Administration and Resources Management	7/30/18	

**RECOMMENDATIONS**

Rec. No.	Page No.	Subject	Status <sup>1</sup>	Action Official	Planned Completion Date	Potential Monetary Benefits (in \$000s)
13	19	Establish procedures (via checklists, training, etc.) for the development of award term incentive plans to comply with the EPA Acquisition Regulation requirements, unless rationale is documented that such excellent service is beyond the contractor's capability or control.	R	Assistant Administrator for Administration and Resources Management	7/30/18	\$76,493**
14	21	Require Contracting Officers to modify contracts EPS50905, EPS90803 and EPS71307 to include the required missing clause language or numbers.	R	Assistant Administrator for Administration and Resources Management	8/30/18	
15	21	Update the EPA Acquisition Guide to require Contracting Officers include specific clause language and numbers for award term contracts.	U	Assistant Administrator for Administration and Resources Management		

<sup>1</sup> C = Corrective action completed.  
R = Recommendation resolved with corrective action pending.  
U = Recommendation unresolved with resolution efforts in progress.

\* Approximately \$297 million of funds could have been put to better use.

\*\* Approximately \$76 million of funds could be put to better use.

## ***Sampled Contracts Reviewed***

	<b>Contract</b>	<b>Award date</b>	<b>Incentive</b>	<b>Contract value amount with potential issues</b>
1	EPD15003	11/20/2014	Non-Award term	\$88,929,000
2	EPC15012	6/29/2015	Non-Award term	91,624,168
3	EPS91401	7/25/2014	Award term	160,000,000
4	EPG15H01113	4/27/2015	Non-Award term	57,089,315
5	EPS21502	5/13/2015	Award term	107,381,864
6	EPR21401	6/25/2014	Award term	13,376,710
7	EPW14022	9/29/2014	Award term	9,973,033
8	EPC15005	12/01/2014	Non-Award term	4,325,000
9	EPS41403	9/26/2014	Non-Award term	76,789,226
10	EPR81204	5/3/2012	Non-Award term	
11	EPW11019	2/1/2011	Non-Award term	99,702,475
12	EPC15008	3/20/2015	Non-Award term	6,974,964
13	EPS71206	9/26/2012	Non-Award term	24,383,469
14	EPS71208	9/27/2012	Non-Award term	22,063,074
15	EPW13005	1/31/2013	Non-Award term	3,348,565
16	EPS91201	4/17/2012	Award term	
17	EPW09031	9/23/2009	Award term	33,655,174
18	EPS50905	11/17/2008	Award term	42,856,831
19	EPW14004	3/20/2014	Award term	
20	EPS21502	5/13/2015	Award term	41,980,031
21	EPS90803	6/24/2008	Award term	110,000,000
22	EPS71307	4/25/2013	Award term	75,686,200
	<b>Subtotal</b>			<b>\$1,070,014,193</b>
	<b>Non-performance based contracts</b>			<b>104,127,475</b>
	<b>Total</b>			<b>\$962,763,059</b>

Source: OIG analysis.

## Agency Response to Draft Report



### MEMORANDUM

**SUBJECT:** Response to the Office of Inspector General Draft Report No. OA-FY16-0209 “EPA Can Achieve Better Value Complying with Performance-Based Contract Requirements,” dated October 13, 2017

**FROM:** Donna J. Vizian, Acting Assistant Administrator

**TO:** Michael Petscavage, Director  
Contract and Assistance Agreement Audits  
Office of Inspector General

Thank you for the opportunity to respond to the issues and recommendations in the subject audit report. We have provided high-level intended corrective actions and estimated completion dates for those recommendations with which the agency agrees. For those that the agency does not agree, attached are technical comments to explain our position and/or proposed alternatives.

If you have any questions for the Office of Administration and Resources Management regarding this response, please contact Celia M. Vaughn, Chief of Staff, Office of Acquisition Management at (202) 564-1047.

#### Attachments

cc: John Showman  
Kimberly Patrick  
Pam Legare  
Celia Vaughn  
Raoul D. Scott, Jr.  
Teren Crawford

Anthony Grear  
David Penman  
Melinda Burks  
Marian Cooper  
Lauren Lemley

**AGENCY'S RESPONSE TO REPORT RECOMMENDATIONS:**

<b>No.</b>	<b>Recommendation</b>	<b>High-Level Intended Corrective Actions</b>	<b>Estimated Completion</b>
1	Perform a periodic review of contracts in the EPA Acquisition System to verify that they are accurately identified as performance-based contracts per the Federal Acquisition Regulations (FAR).	OARM will review the accuracy of EPA Acquisition System contracts no less than annually to verify that they are accurately identified as performance-based contracts per the FAR.	March 15, 2018
2	Require Contracting Officers to correct all contracts which are erroneously recorded as performance-based contracts in the EPA Acquisition System.	OARM will require correction of all contracts which are erroneously recorded as performance-based contracts in the EPA Acquisition System.	March 15, 2018
3	Require Contracting Officers to modify quality assurance surveillance plans for contracts EPC15012, EPG15H0113 and EPC15008 to include missing EPA Acquisition Guide (EPAAG) requirements.	OARM will collaborate with the cognizant contracting office(s) to review the quality assurance surveillance plans for the contracts cited and to complete warranted modifications to the plans to assure compliance with EPAAG requirements.	January 30, 2018
4	Provide specific performance-based contract training that includes quality assurance surveillance plan elements required by the FAR and the EPAAG.	OARM does not agree with the recommendation to develop and/or provide another performance-based training. Training courses on this subject are readily available from many sources. All EPA COR certification applicants, regardless of level, must complete EPA's COR Basic training which covers performance based contracts. Various contracting specialist courses also cover performance-based contracting. The Federal Acquisition Institute (FAI) offers the Automated Requirements Roadmap Tool (ARRT) for free use by all government personnel. The ARRT guides users in developing a Performance Work Statement,	January 30, 2018

		<p>Quality Assurance Surveillance Plan, and Performance Requirements Summary.</p> <p>OARM will periodically publish recommended available performance-based contracts training for COs/CORs and express the importance of improving and updating knowledge and skills in this area.</p> <p>Also, beginning with acquisition planning through contract management and administration, we propose to place greater emphasis on the stakeholders’ collaborative decision-making and thoughtful strategy development to use, award, and successfully implement performance-based contracts. On-the-job training, information exchange sessions, mentoring, and other knowledge transfer mechanisms will be used to reinforce and supplement classroom learning.</p> <p>To verify sound practices in this area, future CMAT reviews will make performance-based acquisition/performance-based service contracts documentation a focal point.</p>	
5	Perform periodic reviews of quality assurance surveillance plans to verify the inclusion of the FAR and the EPAAG requirements.	OARM will enhance oversight and enforcement of compliance with FAR and EPAAG requirements specific to quality assurance surveillance plans through its existing Performance Measurement and Management System internal assessment process. Future CMAT reviews will make performance-based acquisition/performance-based service contracts documentation a focal point.	March 15, 2018
6	Update the EPAAG to include the FAR requirement to identify places of quality assurance.	OARM will update the EPAAG to include the FAR requirement to identify places of quality assurance.	May 30, 2018
7	Update EPAAG to include the requirement to identify incentives and disincentives designed to motivate contractor efforts and are not what is already required the FAR.	OARM will update the EPAAG to be consistent with FAR 16.402-2, Performance Incentives, (b) which states “ <i>To the maximum extent practicable, <b>positive and negative performance incentives shall be considered in connection with service contracts for performance of objectively measurable tasks when quality of</b></i> ”	May 30, 2018

		<i>performance is critical and incentives are likely to motivate the contractor.”</i>	
8	Establish a method to confirm or certify that acquisition officials are sufficiently documenting required surveillance methods for all contracts.	OARM will engage agency stakeholders in communication and collaboration to emphasize the importance of timely and sufficiently recording/documenting the surveillance performed, and establish a method of confirming the adequacy of such surveillance documentation.  Future CMAT reviews will make performance-based acquisition/performance-based service contracts documentation a focal point.	April 30, 2018
9	Update the EPAAG to require both a quality assurance surveillance plan and an award term incentive plan for award term contracts.	OARM will clarify that both a quality assurance surveillance plan and an award term incentive plan for award term contracts are required. It is noted that the requirement for a quality assurance surveillance plan is already stated in FAR 46.4 and EPAAG 37.6.1.9 and does not need to be repeated. However, language will be added to the EPAAG to clarify that a quality assurance surveillance plan is a separate requirement from the award term incentive plan. The award term incentive plan is discussed in EPAAR 1516.401-70(c) and in EPAAG 37.6.1.8(a) as part of the performance work statement.  OARM will review the various affected agency policy documents to ensure clarity and tie in by referencing other subsections as appropriate. For example, OARM will reference the requirements of EPAAR 1516.401-70 in the language discussing award term incentives in EPAAG 37.6.1.8(a).	May 30, 2018
10	Develop a method to verify that acquisition officials have both a Quality Assurance Surveillance Plan and an award term incentive plan for award term contracts.	OARM concurs with this recommendation and will develop and publish such a method.  Future CMAT reviews will make performance-based acquisition/performance-based service contracts documentation a focal point.	May 30, 2018
11	Establish procedures (via policy, guidance, checklists, training, etc.) requiring EPA to grant an	OARM will clarify the issue requiring EPA to grant an award term incentive for superior service. OARM will review the various affected	July 30, 2018

	award term incentive for superior service per EPAAR 1516.401-70 and contract requirements.	agency policy documents to ensure clarity and cohesiveness.  OARM will further engage stakeholders to seek additional input and recommendations regarding procedures and implementation.	
12	Modify contract language to comply with EPA Acquisition Regulation requirements.	OARM will clarify the issue requiring EPA to grant an award term incentive for superior service. OARM will review the various affected agency policy documents to ensure clarity and cohesiveness.  OARM will further engage stakeholders to seek additional input and recommendations regarding procedures and implementation, including any modification to existing contracts.	July 30, 2018
13	Establish procedures (via checklists, training, etc.) for the development of award term incentive plans to comply with EPA Acquisition Regulation, unless rationale is documented that such excellent service is beyond the contractor's capability or control.	OARM will clarify the issue requiring EPA to grant an award term incentive for superior service. OARM will review the various affected agency policy documents to ensure clarity and cohesiveness.  OARM will further engage stakeholders to seek additional input and recommendations regarding procedures and implementation, including the development of award term incentive plans.	July 30, 2018
14	Require Contracting Officers to modify contracts EPS50905, EPS90803 and EPS71307 to include the missing required clause language or numbers.	OARM will collaborate with the cognizant contracting office(s) to review the contracts cited, and to complete warranted modifications.	August 30, 2018
15	Update the EPAAG to require Contracting Officers include specific clause language and numbers for award term contracts.	OARM does not concur with recommendation. The EAS contract writing system is programmed to provide all provision/clause titles and corresponding numbers, and full clause language when it is not incorporated by reference. Given the findings of missing information, it appears that the cognizant CO manually "cut and pasted" the clauses into the contracts and inadvertently left off some of the clause language and numbers. This issue	N/A

		appears to be a user error and/or quality control and oversight issue, which should be corrected through issuance of the appropriate bilateral modification. It does not require an EPAAG amendment.	
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## Technical Comments

### Draft OIG Report OA-FY16-0209, page 1, Background.

The first paragraph states: “FAR Part 37, requires the use of performance-based acquisitions for services to the maximum extent practicable and this applies to all contracts and orders for services regardless of the contract type or kind of service being acquired.”

This is incorrect. FAR 37.102(a)(1) states that when acquiring services, including those acquired under supply contracts or orders, agencies must use performance based acquisition methods to the maximum extent practicable, **except for**:

- Architect-engineer services acquired in accordance with 40 U.S.C. 1101 et seq. (see part 36);
- Construction (see part 36);
- Utility services (see part 41); or
- Services that are incidental to supply purchases.

### Draft OIG Report OA-FY16-0209, page 6, top of page.

The report asserts that FAR 46.401(b) requires a place be designated in the quality assurance plan for where the quality assurance will take place. FAR 46.401 sets forth what should be in a quality assurance plan in its subparagraphs (1) and (2). The FAR states: “*The plans should specify -- (1) All work requiring surveillance; and (2) The method of surveillance*”.

Place of surveillance is **not** identified as one of the items.

However, FAR 46.401(b) **does** state that “***Each contract** shall designate the place or places where the Government reserves the right to perform quality assurance.*” FAR 46.401(b) does not require that the place or places be designated in the QASP.

Contracts EP-C-15-012 and EP-C-15-008 include through incorporation by reference in Section E, the contract clause FAR 52.246-5 INSPECTION OF SERVICES - COST-REIMBURSEMENT. (APR 1984)

Paragraph (c) of that clause states: “*The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all places and times during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.*”

The EPAAG requirement is that the scope of work include a place of performance, where applicable. Unless EPA has a requirement for performance at a specific place (i.e., an on-site contract), the location of performance is left up to the contractor’s discretion as would be befitting in a performance-based requirement.

The standard FAR 52.246-5 - Inspection of Services -- Cost-Reimbursement, offers the government greater flexibility in ensuring that performance requirements are met regardless of locations. In those contracts where the government does not specifically designate a place of performance, the contractor may have a multiple of places where services are being performed.

**Draft OIG Report OA-FY16-0209, page 8, at the end of the first paragraph and the second paragraph.**

Cited sections state that past performance evaluations are not effective because these are already regulatory requirements.

Listed below are several examples of where agencies other than EPA (or other documents) had stated that past performance evaluations are good incentives/disincentives.

- DOE Acquisition Guide Chapter 37 (Page 32 specifically)
- Guidebook for Performance-Based Services Acquisition (PBSA) in the Department of Defense (Page 32)
- Report of the Acquisition Advisory Panel (specially Page 94 and 95)
- Performance Based Contracting Research Paper by Lieutenant Colonel Darryl Taylor linked at the following DOD website. (See Page 25)  
<https://www.dau.mil/cop/pbl/DAU%20Sponsored%20Documents/Performance%20Based%20Contracting%20Research%20Paper%2026%20Apr%202013.pdf>

The use of past performance evaluations as an incentive is utilized by other agencies and is not precluded by the FAR.

## ***Distribution***

The Administrator  
Chief of Staff  
Chief of Operations  
Deputy Chief of Operations  
Assistant Administrator for Administration and Resources Management  
Agency Follow-Up Official (the CFO)  
Agency Follow-Up Coordinator  
General Counsel  
Associate Administrator for Congressional and Intergovernmental Relations  
Associate Administrator for Public Affairs  
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Director, Office of Acquisition Management, Office of Administration and Resources Management  
Director, Office of Resources, Operations and Management, Office of Administration and Resources Management  
Director, Alternative Dispute Resolution Law Office, Office of General Counsel  
Director, Conflict Prevention and Resolution Center, Office of General Counsel  
Deputy Director, Office of Resources, Operations and Management, Office of Administration and Resources Management  
Audit Follow-Up Coordinator, Office of the Administrator  
Audit Follow-Up Coordinator, Office of Administration and Resources Management  
Audit Follow-Up Coordinator, Office of Acquisition Management, Office of Administration and Resources Management  
Audit Follow-Up Coordinator, Office of General Counsel