
BY THE COMPTROLLER GENERAL
Report To The Chairman, Subcommittee On
Oversight And Investigations
Committee On Energy And Commerce
House Of Representatives
OF THE UNITED STATES

The Environmental Protection Agency Should Better Manage Its Use Of Contractors

The Environmental Protection Agency (EPA) relies on contractor support to augment its staff. In fiscal year 1983, for instance, EPA spent an estimated \$215 million for contract employee services. GAO found that EPA has not (1) monitored contractors' activities to ensure that performance remains cost-effective or (2) performed reviews to ensure that contractor employees were not establishing policy or performing other types of work traditionally reserved for federal employees.

EPA obtains about 88 percent of its contract support through cost-reimbursable contracts. These contracts provide EPA maximum flexibility in accomplishing program objectives, but offer limited incentive for the contractor to control costs. GAO believes that EPA is missing opportunities to control costs through the increased use of fixed-price contracts. In addition, GAO noted that EPA, contrary to its regulations, has directed contractors to perform work outside the scope of their contracts and to award sole-source subcontracts to firms selected by EPA.

EPA is emphasizing the accomplishment of program goals and objectives at the expense of sound contract management. GAO believes that improved contract management and adherence to federal procurement regulations will help EPA not only improve the quality of contractor work but also assist in meeting program objectives. GAO makes several recommendations to improve EPA's management of its contract activities.



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JANUARY 4, 1985



COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON D.C. 20548

B-217137

The Honorable John D. Dingell
Chairman, Subcommittee on
Oversight and Investigations
Committee on Energy and Commerce
House of Representatives

Dear Mr. Chairman:

As requested in your December 28, 1982, letter and our subsequent discussions with your office, this report discusses the Environmental Protection Agency's (EPA's) use of contractors to support its programs. Overall, we found that EPA relies heavily on contractors to augment its own staff. Although this practice accords with the federal government's policy of using commercial services to the maximum feasible extent, EPA has substantial opportunities to increase the effectiveness of its contractor support.

As arranged with your office, unless you publicly release its contents earlier, we will make this report available to other interested parties 30 days after its issue date. At that time, copies will be sent to appropriate congressional committees; the Administrator, EPA; and the Director, Office of Management and Budget.

Sincerely yours,

A handwritten signature in black ink that reads "Charles A. Bowsher".

Comptroller General
of the United States

COMPTROLLER GENERAL'S REPORT
TO THE CHAIRMAN, SUBCOMMITTEE
ON OVERSIGHT AND INVESTIGATIONS,
COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

THE ENVIRONMENTAL PROTECTION
AGENCY SHOULD BETTER MANAGE
ITS USE OF CONTRACTORS

D I G E S T

The Chairman, Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, requested that GAO review the Environmental Protection Agency's (EPA's) use of contracts to support its activities. In particular, the Chairman asked GAO to determine the (1) extent, cost, and propriety of contracting for employee services, (2) extent and rationale for using cost reimbursable rather than fixed-price contracts, (3) adequacy of EPA's contract management, and (4) appropriateness of two contracts awarded to the Maxima Corporation for clerical support services.

The Chairman also requested that GAO determine the cost-effectiveness of using federal employees instead of contractors and evaluate the quality of contractor work. GAO was unable to answer these two questions because (1) EPA has not prepared cost comparisons of using federal employees versus contractors, and as a result, there is insufficient information to perform this analysis and (2) EPA did not prepare adequate performance specifications which are needed to objectively evaluate the quality of contractor work. (See pp. 5 to 9.)

GAO's review primarily focused on 13 contracts, 8 of which were reviewed in detail, plus the 2 Maxima Corporation contracts. These contracts are not a statistically valid sample and may not be representative of all EPA contracts; however, GAO believes and EPA officials confirmed that they generally represent the type of contracting practices EPA uses. To answer the Chairman's questions, GAO also relied on an earlier 1982 review of EPA contracting that GAO performed, the results of a 1983 EPA task force on contracting, and recent reviews by EPA's Office of Inspector General.

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EPA SUPPLEMENTS ITS WORK FORCE
BY USING CONTRACT EMPLOYEES

EPA relies on contractor employees to augment its staff. In fiscal year 1983, for instance, GAO estimated¹ that EPA spent about \$215 million for contract employee services. In general, these services were for work similar to that performed by EPA's professional staff. According to EPA, contractor employees are needed primarily because it does not have enough federal employees to carry out program objectives. They are also used to provide EPA flexibility in meeting changing program needs and to provide temporary staff for programs which may expire after a few years. (See pp. 10 to 12.)

Office of Management and Budget (OMB) Circular A-76 provides policy and guidance on whether the government's commercial activities should be performed by federal employees or commercial sources. Before August 1983 the circular generally required that federal agencies compare the costs of using federal employees versus contractors and, on the basis of the results of the comparison, use the approach with the lowest cost. GAO believes a cost comparison would have been needed according to the circular in effect at that time for 11 of the 13 contracts it reviewed. However, EPA did not make the comparison because it believed that OMB would not allow more federal employees to be hired even if that alternative had been more cost-effective.

In August 1983, OMB revised the circular to, among other things, encourage the use of contractors. In general, a cost comparison is only required when contracting out would affect a function currently performed in-house by 10 or more federal employees or there is reason to believe that contracting would result in unreasonable prices. The current circular specifically provides that a cost comparison is not required when a function is started unless it appears that the cost would be unreasonable. As a result, after a specific piece of work is contracted or when new work

¹GAO prepared an estimate because EPA does not collect reliable information on how extensively it uses contractor support services.

requirements are identified, a cost comparison is not required. In these cases, the current circular assumes that the price established by competition in the private sector will result in the lowest cost to the federal government. (See p. 12.)

The current circular, as well as the prior circular, requires that all contracted activities be continually monitored to ensure that performance remains cost-effective. Contrary to this requirement, EPA has not established procedures for monitoring contractor costs. As a result, EPA does not know if any of its support service contracts are cost-effective. Circular A-76 requires that a preliminary assessment be made when there is reason to believe contract prices may be unreasonable. (See p. 13.)

The preliminary assessment is part of the monitoring process required for ongoing contracts and is the preliminary step to seeking additional competition or making a cost comparison. GAO performed a review of one contract to determine the potential effect of not monitoring contractor costs.

In this case, GAO found that EPA needs to monitor the contract's cost because (1) EPA's Acting Director for Emergency Response, who is in charge of the program involving the contract, told GAO that using federal employees would be more cost-effective, (2) the contractor's staff and EPA's staff perform identical work, and (3) EPA was using contractor employees for work of a long-term nature.² In a November 1984 meeting, the OMB official responsible for implementing A-76 agreed with GAO that this contract would appear to require cost monitoring and potentially may need a cost comparison. (See pp. 13 to 15.)

The circular also requires that contractor employees not be used to perform activities that are inherently governmental in nature. According to the circular, such activities would include functions ". . . which are so intimately related to the public interest as to mandate performance by government

²The circular regards the duration of the work to be performed as a criteria for performing a cost comparison.

employees." This would include situations where contractor employees establish policy or provide day-to-day supervision or direction of federal employees. It is the responsibility of each agency to determine the portion of its workload which is inherently governmental and to ensure that these functions are performed by government employees.

EPA has not been reviewing its work prior to awarding contracts to determine if the work is inherently governmental and, as a result, EPA does not know if contract employees are performing the type of work that is prohibited by the circular. However, in the 13 contracts GAO reviewed, it did not find any instances where contract employees appeared to be performing inherently governmental functions. These employees were often doing the same work as federal employees, but EPA appeared to be using them for assistance and was not allowing them to set policy or establish program direction.

The Director of EPA's Procurement Division, Office of Comptroller personnel responsible for implementing the circular, and program office personnel responsible for contract management told GAO that they do not believe OMB would allow them to hire more federal employees even if they determined that contracted work was inherently governmental or that costs were unreasonable. Therefore, they saw no need to make cost comparisons before awarding support service contracts, continually monitor contractor costs, or determine if contractors are performing inherently governmental functions. (See p. 16.)

OMB's Deputy Associate Administrator responsible for implementing Circular A-76 told GAO in a November 1984 meeting that the circular provides guidance to federal agencies and that the actual implementation is the responsibility of each agency. The deputy administrator also said that it is the intent of this administration to encourage the use of contractors. However, OMB would allow more federal employees to be hired if a good case is made that it would be cost-effective. (See p. 15.)

EPA'S USE OF COST-REIMBURSABLE CONTRACTS

From fiscal years 1977 to 1983, an average of 88 percent of EPA's contract obligations was for cost-reimbursable contracts, reaching a high of 92 percent in fiscal year 1981. Cost-reimbursable contract obligations averaged about \$280 million a year during this period. (See pp. 20 to 23.)

EPA uses large cost-reimbursable contracts as part of an overall mission-support strategy. Under this strategy, each major EPA program normally has at least one large cost-reimbursable contract. These contracts normally have a very general scope of work, specifying the type of contractor assistance that can be performed and the total number of contractor hours available for use. As specific tasks are identified, the program office submits a work assignment which includes a more detailed statement-of-work and an estimate of the hours needed to perform the task. These contracts give a great deal of flexibility to program offices, but provide little incentive for efficiency and place a large administrative burden on both the federal government and the contractor to control costs.

GAO noted instances where the work performed under large cost-reimbursable contracts (e.g., building fences and providing training courses) was suitable for competitive fixed-price contracts. In large measure, using cost-reimbursable contracts for work suitable for fixed-price contracting is a direct result of EPA's decision to use mission-support contracting. As work is required, issuing a work assignment under an established mission-support contract is faster than developing detailed performance specifications, advertising, and awarding a fixed-price contract. This latter process can take 6 months while a work assignment can be issued in days or hours. (See p. 24.)

EPA procurement officials stressed that because of the difficulty of contracting for professional support services and EPA's need to accomplish its work quickly, the extensive use of cost-reimbursable contracts is appropriate. GAO also concluded that in many cases the use of cost-reimbursable contracts is the

most appropriate contracting method for EPA. However, GAO is concerned and EPA procurement officials agreed that EPA has opportunities to make more extensive use of fixed-price contracts.

In addition, GAO found that EPA directed contractors to perform work outside the scope of the contract in four of eight contracts GAO reviewed in detail. EPA's action caused the work to in effect become a sole-source procurement, which is prohibited under general contracting principles when competition is feasible. For example, EPA assigned training support work of \$3.8 million to a contractor although the work was outside the scope of the contract and was suitable for fixed-price contracting. The project manager told GAO that this was done because of time constraints and because the contract was already established. EPA did not consider a fixed-price contract in this case or prepare any documentation to support the need for a sole-source procurement. (See p. 26.)

EPA also, without preparing a justification, directed prime contractors to award sole-source subcontracts to firms selected by EPA in violation of EPA Procurement Directives. According to EPA procurement officials, these sole-source subcontracts are normally made for expediency; the prime contractors do not have to follow federal procurement regulations and can award a sole-source contract more quickly than EPA's procurement offices. However, this process bypasses all the procurement controls that have been established to protect public funds and ensure that the government receives the best services at the most reasonable price. EPA's Procurement Division is aware of this problem and has issued guidance to eliminate the use of directed sole-source procurements. (See p. 28.)

CONTRACT MANAGEMENT NEEDS IMPROVEMENT

Federal procurement regulations require that EPA maintain sufficient monitoring to ensure that it receives a quality product at a reasonable price. This is particularly important in cost-reimbursable contracts, which place minimum risk on the contractor to adequately perform the work and minimum incentive to

control costs. EPA's contract management directives establish three requirements that must be met to ensure a quality product and reasonable price: (1) establish clear lines of supervision and accountability for contract management, (2) prepare detailed independent government estimates of the cost to complete work assignments, and (3) establish objective measurable criteria for evaluating final products. (See p. 31.)

In managing its contractors, EPA frequently has not been complying with these procedures. As a result, GAO has concluded that EPA's management of cost-reimbursable contracts does not provide assurance that quality work is received at a reasonable price. (See pp. 34 to 39.)

EPA is not complying with its directives because of the desire of its project offices to expedite the contracting process. To do this, EPA allows project officers instead of contract officers to carry out most contract management responsibilities. While project officers receive a 5-day orientation course on contract management, they generally lack the training or experience to act as contract managers. EPA, contrary to federal and agency procurement regulations, has in effect delegated the responsibility and authority of the contract officer to the project officer.

According to EPA studies, the chairman of a recent EPA procurement task force, and the top management of EPA's Procurement Division, EPA manages its contracts with project officers because it considers accomplishing its work as quickly as possible to be a higher priority than contract management, which can involve more review levels and increase the time to carry out work. The Director of EPA's Procurement Division also told GAO that EPA has an insufficient number of contract officers and needs more contract officer involvement to properly manage its contracts. (See pp. 32 to 35.)

EPA CONTRACTS FOR CLERICAL SUPPORT

At the Subcommittee's request, GAO reviewed two contracts awarded to the Maxima Corporation valued at about \$500,000 each. EPA awarded these contracts because of a shortage of clerical support in its toxic

substances control program. EPA appears to have followed proper procedures in having the work performed.

Under one contract, EPA paid Maxima a \$240,000 payment, which represented the difference between the amount Maxima had received for actual work performed--about \$260,000--and the contract's minimum payment of \$500,223. GAO was concerned that the payment might not be appropriate, and that the contract could have been terminated for the convenience of the government. The contractor in this case may only be entitled to any expenses caused by EPA's not meeting the minimum purchase requirement. EPA's Office of General Counsel is taking action to recover any contract overpayment. (See pp. 42 to 44.)

RECOMMENDATIONS TO THE ADMINISTRATOR, EPA

GAO believes that EPA is emphasizing the accomplishment of program goals and objectives at the expense of sound contract management. According to EPA officials, this emphasis is a direct result of the need to respond rapidly to protect the public, deal with emergencies, and meet legal deadlines. While GAO agrees that EPA's program objectives are important and that extraordinary contracting measures might be needed in limited numbers of cases, it is also important that EPA adhere to the requirements of federal procurement regulations. If properly followed, these regulations are designed to provide EPA the contracting flexibility it needs and ensure that the government receives good value for its contracting dollars.

GAO makes detailed recommendations in chapters 2 through 4. The primary thrust of these recommendations is that the EPA Administrator

- establish procedures for monitoring contracts for cost-effectiveness (see p. 19),
- emphasize procedures to ensure that fixed-price contracts are used where appropriate and increase controls over the use of sole-source contracting (see p. 29), and

--increase management oversight by EPA's
Procurement Division (see p. 41).

AGENCY COMMENTS

GAO did not obtain official agency comments on this report. However, in November 1984 GAO discussed its findings with OMB officials responsible for implementing Circular A-76 and EPA procurement officials. Their comments have been incorporated where appropriate in this report.

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ABBREVIATIONS

EPA	Environmental Protection Agency
GAO	General Accounting Office
OMB	Office of Management and Budget
PCMD	Procurement and Contract Management Division

CHAPTER 1

INTRODUCTION

For the past several years, the Environmental Protection Agency (EPA) has relied on contractor personnel to supplement its staff and help carry out its programs. According to EPA, this has been increasingly necessary because its personnel levels have not been sufficient to keep up with budget increases and expanded program responsibilities. To illustrate this point, the following table shows the relationship between EPA's personnel levels, contract obligations, and operating budgets for fiscal years 1977 through 1983. As the table shows, EPA's budget has grown substantially during this period without a corresponding increase in staff. EPA officials attribute much of the growth in contract obligations to its increased need for contractor support to supplement its staff operations.

GROWTH OF EPA'S USE OF CONTRACTING
IN RELATION TO ITS STAFF LEVELS

<u>Fiscal year</u>	<u>Full-time equivalent employees</u>	<u>Total contract obligations</u>	<u>Operating budget</u>
		----- (millions) -----	
1977	10,150	\$217.	\$ 779
1978	10,224	281	999
1979	10,698	309	1,203
1980	11,015	358	1,269
1981	10,621	362	1,428
1982	9,821	359	1,276
1983	9,313	353	1,250

This report primarily discusses the propriety of EPA's use of contractor support and the procurement practices EPA used to obtain and control contractor services. This chapter provides background information on the way EPA's procurement organization is supposed to operate, the type of contracts predominantly used by EPA, other related studies of EPA's procurement operations, and the scope and methodology we used to make this review.

CONTRACT RESPONSIBILITIES
WITHIN EPA

The Procurement and Contract Management Division (PCMD) under EPA's Assistant Administrator for Administration and Resource

Management has primary responsibility for EPA's contracting activities. PCMD is responsible for awarding and managing contracts, and a contract officer is assigned to oversee the contract from initiation to termination. The contract officer, a PCMD official, is the only official authorized to commit the government to a contract and to modify contract terms.

EPA's program offices are discrete organizational entities with responsibility for managing specific programs. For example, the Superfund Program office is responsible for evaluating hazardous waste sites and preparing needed cleanup plans. (Superfund is the commonly used name of the Comprehensive Environmental Response Compensation and Liability Act.)

PCMD awards contracts to provide support to the program offices. The program offices develop detailed specifications on the kind and quantity of needed goods and services, and PCMD selects the most appropriate type of contract and the contractor for obtaining the services. On each contract, a program official, called a project officer, is assigned to provide technical direction and oversee the contractor's work. The project and contract officer function as a team. The project officer provides subject matter expertise to guide the contractor, and the contract officer provides contract management.

CONTRACT TYPES USED BY EPA

In general, there are two primary contract types, fixed-price and cost-reimbursable, and numerous variations of each depending on the unique requirements of a specific procurement.

Federal Procurement Regulations stress the desirability of procuring support services through fixed-price contracts whenever possible. Under this type of contract, the contractor assumes the responsibility to perform an agreed-upon scope of work within an established contract price. In general, the contract price cannot be changed regardless of the contractor's cost. For this reason, fixed-price contracts are usually suitable where reasonably definite design or performance specifications are available and can be used to establish a realistic contract price.

Cost-reimbursable contracts are used when the uncertainties about the scope of work do not permit a reasonable estimate of cost or when there is a large risk that the work cannot be performed adequately, as occurs in research and development. Under a cost-reimbursable contract, the contractor is paid actual costs for performing the work. According to EPA and federal procurement regulations, the contractor, in the type of cost-reimbursable contract primarily used by EPA, is not generally responsible for accomplishing the work but only for making a best effort. Cost-reimbursable contracts have three significant drawbacks: (1) they place maximum risk on the government and minimum risk on the contractor, (2) they provide the contractor

with little incentive to control costs, and (3) they place a large administrative burden on both the government and the contractor to oversee, control, and identify contract costs.

Nevertheless, cost-reimbursable contracts are desirable under certain circumstances. For instance, they are particularly useful in responding to emergencies or when the scope and nature of the work to be performed is uncertain and subject to change. In addition, this type of contract provides the most expedient method of obtaining support and the maximum flexibility in redirecting the contractor's efforts as new information is obtained or new support needs are identified.

An important advantage to cost-reimbursable contracts is that they reduce the time and effort required by the program office to award the contracts. For a fixed-price contract, the program office develops detailed performance specifications prior to awarding a contract--a time-consuming, labor-intensive process. With a cost-reimbursable contract, as primarily used by EPA, the program office is only required to develop a general statement of the nature of the work to be performed.

Description of how EPA uses a cost-reimbursable contract

A typical EPA cost-reimbursable contract¹ goes through the following steps. An EPA program office determines that it will need contractor support, and develops a general statement-of-work describing the kind of support and a rough estimate of the amount of support. Using this information, PCMD prepares a request for proposal and solicits competition from those firms that might be interested and/or capable of doing the work. All proposals received are evaluated to determine which companies are best qualified to perform the work at the most reasonable cost. Usually, negotiations are held with one or more of the companies, and a contract is awarded which establishes the hourly rates and the number of hours contractor employees will be available to assist EPA and specifies the type of assistance these contractors can provide. For example, this type of cost-reimbursable contract might call for providing 20,000 hours of general engineering support (at an established hourly rate) for a particular program office.

As the program office identifies specific work to be performed by the contractor, the project officer prepares a work

¹Cost-reimbursable contracts are awarded in either completion or term forms. The primary difference between the two contract forms is that in the term form, the contractor provides a specified level of effort for a specific period of time. In the completion form the contractor is responsible for completing a specific task and end product. In fiscal year 1982, 77 percent of EPA's cost-reimbursable contracts used the term form. Therefore, the description in the text above describes EPA's process for awarding a term form of cost-reimbursable contract.

assignment. The work assignment includes a detailed statement-of-work and necessary background information on the work to be done, identifies a final deliverable product, and includes an EPA estimate of the number of hours which will be needed to do the work. For example, a work assignment could call for developing an engineering estimate of the stability of a dam at a hazardous waste site. The assignment would explain why EPA would want an assessment of the dam's stability, the factors to be evaluated, and the methodology to be used in the evaluation and would specify a final report detailing the results of the study.

After the project officer prepares the work assignment, it is reviewed and approved by the contract officer, who sends it to the contractor. As the contractor performs the work, the project officer provides technical direction in resolving problems as they arise and general monitoring of the work performed. The contracting officer is responsible for providing overall contract management and for overseeing and controlling the project officer. The contract officer acts to ensure that the project officer satisfactorily follows EPA and federal procurement directives.

The contract officer's essential duty is to remain objective and protect the government. As EPA's procurement directives stress, the project officer is normally not highly trained in contracting and is primarily concerned with getting the work done. As a result, the project officer has a built-in bias toward emphasizing speed over control. The contract officer acts as a critical control to protect against well-intended short cuts that reduce the government's protection or that circumvent procurement regulations.

PREVIOUS GAO REPORT IDENTIFIED EPA CONTRACTING PROBLEMS

In a March 1982 report to Senator Max Baucus on EPA's contracting,² we identified a number of problem areas. These included the extensive use of cost-reimbursable contracting in which the contractor provides a specified number of hours of labor instead of a specific end product; the use of sole-source contracts; extensive contract modifications; questionable value of work products; and potential contractor organizational conflicts-of-interest. For example, the sample of 1980 contracts that we reviewed revealed the following:

--Eighty-eight percent of the contracts were cost-reimbursable contracts, which provide minimal incentive for contractors to effectively manage costs.

²EPA's Use of Management Support Services (CED-82-36, Mar. 9, 1982).

- Sixty percent of the contracts were modified to increase costs, expand the scopes of work, and/or extend periods of performance. These modifications increased the costs of the contracts to 2-1/2 times the original amounts, from \$126.8 million to \$317.8 million.
- Of 30 EPA management support service contracts which we reviewed, work products provided under 10 contracts appeared to be of questionable value to EPA, and no work product was received under one contract.
- In 84 out of 217 contracts, potential organizational conflicts-of-interest existed which could diminish the contractor's ability to give EPA impartial, objective advice. For example, EPA contracted with one chemical company to provide pollution control data to support EPA's enforcement action against another chemical company.

OBJECTIVES, SCOPE, AND METHODOLOGY

In a December 28, 1982, letter, the Chairman, Subcommittee on Oversight and Investigations, House Committee on Energy and Commerce, requested that we examine EPA's overall use of contracting, with particular emphasis on the quality of contractor work. The request and subsequent discussions with the Chairman's office provided additional issues concerning EPA's use of contract personnel to support its activities. On the basis of these discussions, we concentrated our efforts on the following major issues:

- The extent and propriety of EPA's contracting for employee services and the costs of such contracts versus the costs of using federal employees. (See ch. 2.)
- The extent of and EPA's rationale for using cost-reimbursable contracts; the extent of subcontracting by prime contractors, including any additional cost to EPA associated with the subcontracting; and whether EPA was aware of the extent of subcontracting by prime contractors. (See ch. 3.)
- EPA's management of its contractors and whether EPA was receiving useful, quality products from the contractors. (See ch. 4.)
- The appropriateness of two contracts between EPA and the Maxima Corporation. (See ch. 5.)
- Whether contracting changes recently made by EPA will have a meaningful impact on the procurement process. (See app. I.)

To address these issues, we selected 13 cost-reimbursable contracts, 11 of which related to the Superfund Program. The 13 contracts were awarded by EPA's primary contracting offices located in Washington, D.C.; Cincinnati, Ohio; and Research Triangle Park, North Carolina. Five contracts were awarded by the Washington, D.C., office, and 8 contracts were awarded by the two field offices. The 11 Superfund contracts were selected because (1) the Chairman requested that we concentrate our review on Superfund contracts and (2) they included the largest Superfund assignments awarded in fiscal year 1982 at the procurement offices we visited. Also, the Chairman specifically asked us to review two of the contracts--one toxic waste program contract awarded to the A.T. Kearney Corporation and one Superfund contract awarded to Booz, Allen, and Hamilton, a private consulting firm.

The 13 cost-reimbursable contracts we selected are not a statistically valid sample of EPA's universe of cost-reimbursable contracts and do not allow a projection of our findings to EPA's total procurement operation. Rather, our selection was designed to facilitate the evaluation of the specific issues raised in the Chairman's request and to test the procurement policies and procedures of EPA's three procurement offices. However, in meetings with officials from EPA's Procurement division, the official told us that our findings appear to accurately reflect EPA's overall procurement situation. For each of the areas we reviewed, we also used information from our 1982 report, audit reports by EPA's Office of Inspector General, and internal reviews performed by EPA program offices from 1981 to 1983. These reports supplemented the results of this review. Our review was performed between May and September 1983.

We discussed the extent of EPA contracting for employee services and the costs of such contracts versus the costs of using federal employees with Office of Management and Budget (OMB) officials who review EPA's budget; OMB's Deputy Associate Administrator responsible for implementing federal guidance on using contractors; the Chairman of EPA's Procurement Review Steering Group; and various officials of EPA's Procurement and Contracts Management Division, Office of the Comptroller, and the Superfund Program office. We were unable to determine the cost-effectiveness of EPA's using contractor employees in lieu of federal employees. EPA had not prepared cost comparisons, which would have provided sufficient information to perform this analysis. The work required for us to independently analyze a sufficient number of contracts to reach a conclusion in this area was prohibitive. Therefore, as agreed with the Chairman's office, we did not attempt to determine the relative cost of using contractors versus federal employees.

We did, however, review contractor costs versus federal employee costs under one Superfund Program contract. We selected this contract for a more detailed review because the contract work was a long-term effort, and contractor employees were performing

work identical to that performed by EPA's federal employees. For this contract we talked with responsible EPA officials and reviewed appropriate contract documents to determine if it might have been more cost-effective, in this case, to have hired additional federal employees.

We also estimated the extent that EPA uses contractors to augment its federal work force. We developed this estimate on the basis of an extensive analysis we made for our 1982 report. For that report we selected and reviewed 490 active contracts to determine the percentage which was for employee services. We determined that approximately 61 percent of EPA's contract obligations was for employee services. Because EPA officials did not believe that their use of support service contracts had changed substantially in 1983, we estimated the extent of this type of contracting by multiplying the total 1983 contract obligations by 61 percent. Without repeating the extensive analysis made for our 1982 report, we know of no other source of data which is more current or accurate. Overall, statistical data on contracting was obtained from EPA's financial accounting and contract information system. We did not perform a reliability assessment of EPA's information systems and, as a result, cannot comment on the overall reliability of the statistical data used to compute the extent of 1983 support services contracting.

To determine the propriety of EPA contracting for employee services, we (1) reviewed applicable federal laws, regulations, and guidance, (2) reviewed EPA's policy and procedures for determining what work is inherently governmental, (3) discussed the issue with EPA program managers and PCMD's Director, and (4) discussed EPA's use of contractors with the OMB reviewers responsible for EPA. Although it was not a criterion in selecting the 13 contracts we reviewed, 11 of the 13 contracts were for contractor employee services.

Concerning EPA's use of cost-reimbursable contracts, we talked with PCMD's Director and senior Superfund Program officials, and reviewed EPA studies on the use of these types of contracts. We made extensive use of information collected by EPA's Procurement Review Steering Group. The steering group was established to study EPA's overall use of contracting and make recommendations to reduce paperwork and the time required for awarding contracts, and eliminate unneeded levels of oversight. The steering group, which was established in 1982 and completed its work in 1983, included EPA senior-level program managers as well as PCMD contracting specialists.

In 8 of the 13 cost-reimbursable contracts we selected for review, we selected several work assignments to determine if the work was suitable for purchase by fixed-price contract. Seven of the contracts involved Superfund Program work and the other dealt with toxic wastes. We did not select the work assignments on the basis of statistical sampling and did not review all work assignments in the contracts because of the high number of

assignments in each contract. Instead, in 7 of the contracts, we judgmentally selected work assignments that involved Superfund work. In the toxic waste contract, we judgmentally selected work assignments issued by EPA's Washington procurement office.

We reviewed information in EPA's Contracts Management System and Financial Accounting System to determine (1) the extent of subcontracting by EPA's contractors, (2) whether EPA was aware of the extent of subcontracting, and (3) the additional costs to EPA associated with using subcontractors. In addition, we discussed the issue with PCMD's Director, reviewed internal EPA studies, and collected subcontracting data from the 13 contracts. We were unable to determine the overall cost and extent of subcontracting by EPA's prime contractors. EPA does not maintain overall information on the extent and cost of subcontracting. As a result, to determine the extent and cost of subcontracting would have required individually reviewing every contract EPA issued. We did, however, collect information on the cost of subcontracting for the 13 contracts.

To assess EPA's management of its contractors, we selected 8 of the 13 contracts for a more detailed analysis. These eight contracts were the same ones we selected for our review of the work assignments. We also discussed work responsibilities with the applicable contract officers and program office personnel.

To determine the quality of contractor work, we generally discussed the quality of work products for all 13 contracts with the project officers and program offices for whom the work was done. We also considered information in our March 1982 management support services report, which evaluated work performed in 30 contracts.

We also attempted to evaluate the technical adequacy of final work products from a limited number of judgmentally selected work assignments from 8 contracts. This effort was unsuccessful because, in the work assignments we reviewed, EPA had not established sufficiently detailed specifications on how the work was to be performed or how the information was to be contained in the final product to permit an evaluation of the product's technical adequacy.

To determine the effect of EPA's new contract initiatives, we studied the 1983 report prepared by the Procurement Review Steering Group. We could not evaluate the potential impact of the new procedures since they were being implemented during our review.

As requested by the Chairman's office, we did not obtain written agency comments on the draft report. In a November 1984 meeting and other meetings, however, we did discuss the matters contained in the report with the director and key PCMD officials. Their comments have been incorporated, where appropriate, in this report. Our review was performed in accordance with generally accepted government audit standards, except for not obtaining agency comments and not verifying the accuracy of EPA's procurement information systems.

CHAPTER 2

EPA'S USE OF CONTRACTS FOR EMPLOYEE SERVICES

The Chairman requested that we determine (1) the extent of EPA contracting for employee services, (2) the costs of such contracts versus the costs of using federal employees, and (3) the propriety of EPA's use of contracting in light of federal laws, regulations, and guidance. We found the following:

- EPA uses contract employees to augment its personnel. We estimated that in fiscal year 1983 EPA spent \$215 million for contract employee services.
- Sufficient cost information was not available to allow a comparison of contractor employee costs with federal employee costs.
- Use of contractor personnel is not allowable if the work to be done is "inherently governmental." EPA has not developed detailed criteria specifying what type of work is inherently governmental.

EXTENT OF EPA CONTRACTING FOR EMPLOYEE SERVICES

EPA uses contractor employees primarily because it has an insufficient number of federal employees to carry out its programs. However, EPA also believes that contractor employees provide flexibility in meeting changing program needs and provide short-term support for programs which will expire or be turned over to the states or for emergency response.

Because EPA does not collect reliable information on how extensively it uses contractor personnel, we developed an estimate as part of our March 1982 report on management support services. In that report we defined management support services as contract support in which contract personnel are used to augment EPA personnel and perform similar work. In general, this work involves the collection and analysis of information on which to base policy or management decisions.

To determine the extent of EPA's use of contractor support for our 1982 report, we randomly selected and reviewed 490 contracts that were active as of September 30, 1980. These contracts were drawn from EPA's three primary procurement offices and in total involved \$349.3 million in cumulative obligations. For each contract, we examined the nature of the work being performed by the contractor and determined whether the contracts were for management support services. Using this method, we determined that about 61 percent of the contract obligations in our sample were used to purchase management support services. On the basis of the results of the sample, we estimated that 61 percent of EPA's 1981 contract obligations were for management support services.

The Chairman of EPA's Procurement Review Steering Group and Deputy Director of PCMD told us that they do not believe that management support contracting has decreased since 1980. Therefore, for the purposes of this report, we assumed that the 61-percent estimate we developed for our 1982 report was still valid. Without repeating the time-consuming process we used in the previous study, we know of no better or more recent information from which to determine the extent of EPA's use of contractor employees to augment its federal employees. Using the 61 percent estimate, we estimated that EPA's fiscal year 1983 management support contracting came to about \$215 million. In comparison, EPA spent \$392 million on personnel compensation for 9,313 federal employees in 1983. The \$392 million for personnel compensation only includes direct salary costs; it does not include fringe benefits, travel, support costs, and other related overhead costs.

The \$392 million for EPA federal employee's salaries and the \$215 million for contractor support are not directly comparable. First, we do not know how many staff years are included in the \$215 million of contractor costs. Second, the \$215 million for contractor support is the total cost of this support. The \$215 million includes all costs, such as travel, fringe benefits, and overhead. The \$392 million for EPA's federal employees does not include these costs. To make a direct comparison of federal and contractor employee costs would require allocating these costs to a comparable number of EPA employees. This cost-allocation process would require that we know the number of staff years of contractor support being purchased and would require extensive, detailed accounting information so that we could allocate EPA overhead (travel, fringe benefits, etc.) to an equal number of federal employees. EPA's accounting system does not collect sufficient information to permit such an allocation.

Our December 1982 report¹ concluded that the primary reason EPA uses contractor support is because it has an insufficient number of federal employees to carry out its work. However, there are other reasons for using contractor employees, and these additional reasons appear to determine how EPA allocates work between its federal employees and contractors. PCMD's Director, the steering group chairman, and various branch chiefs in the Superfund Program told us that, under certain circumstances, EPA prefers using contractors to federal employees when

- EPA programs are likely to change, requiring different missions, personnel levels, and personnel skills;
- EPA programs are scheduled to expire or be turned over to the states within a short period of time;
- federal salaries are too low to hire personnel with certain technical or specialized skills; and

¹Potential Impacts of Reducing the Environmental Protection Agency's Budget (GAO/RCED-83-75, Dec. 30, 1982).

--EPA must respond rapidly to an emergency and needs a large staff for the duration of the emergency.

Superfund's Acting Deputy Director, for example, told us that EPA did not consider meeting all of its work requirements by hiring federal employees. EPA proceeded on the assumption that the Superfund Program will terminate in 1985 when it is scheduled to expire. EPA did not wish to hire and then fire employees after such a short period.

COST COMPARISON: CONTRACTED
OUT VERSUS FEDERALLY PERFORMED

OMB Circular A-76 (revised Aug. 1983)--"Performance of Commercial Activities"--provides policy and guidance on whether the government's commercial activities should be performed by federal employees or commercial sources. The circular directs government agencies to rely on the private sector for its commercial goods and services as long as it is more economical.

In general, a cost comparison is only required when contracting out would affect a function currently performed in-house by 10 or more federal employees or there is reason to believe that contracting would result in unreasonable prices. The current circular specifically provides that a cost comparison is not required when a function is started unless it appears that the cost would be unreasonable. As a result, after a specific piece of work is contracted or when new work requirements are identified, a cost comparison is required. In these cases, the current circular assumes that the price established by competition in the private sector will result in the lowest cost to the federal government.

We met with OMB's Deputy Associate Administrator for Policy, who is responsible for implementing the new circular. The official told us that OMB is emphasizing the need to prepare cost comparisons of work performed by federal employees to determine if it would be more cost-effective to contract out. The official described the current circular as having a double bias. If work is already contracted out or new work requirements arise, the work should be contracted out without preparing a cost comparison. If work is being performed by federal employees, a cost comparison should be made. However, in order to protect federal employees, the circular does require that the private sector costs be at least 10 percent lower before the work is contracted.

Because the 13 support service contracts we reviewed were awarded before August 1983, the previous OMB criteria were in effect. At that time, the circular generally required agencies to

perform a cost comparison, consequently, in most cases, EPA should have prepared a cost comparison before contracting out to determine the most economical way to conduct the work--in-house with federal employees or through a support service contract.

The EPA Office of the Comptroller official responsible for implementing OMB Circular A-76 told us that to the best of his knowledge, EPA had only prepared two or three cost comparisons in 1982 and 1983. In his opinion, however, EPA was probably required to make a large number of these comparisons during that time. The official also told us that EPA is preparing an inventory of functions currently being performed by federal employees and plans to prepare cost comparisons of this work to determine if it would be more cost-effective to use contractors. Office of the Comptroller officials, the Deputy Director of PCMD, and contract officials for the contracts all provided the same reason for EPA's not performing the cost comparisons. They believe that regardless of the results of a cost comparison, EPA would not have received authority to hire additional federal employees.

Consequently, for these 11 contracts, EPA does not know if using federal instead of contractor employees would have resulted in a lower cost to the government. Further, without the information provided by cost comparisons, we have insufficient information to evaluate the cost-effectiveness of using contractors to perform the work.

EPA IS NOT MONITORING THE COST-EFFECTIVENESS OF ITS SUPPORT CONTRACTS

Although OMB Circular A-76 has changed in some areas, both the old and new circulars require that agencies continually monitor ongoing support service contracts to ensure that the work remains cost-effective. EPA, however, has not been monitoring its contracts for this purpose. EPA Office of the Comptroller officials, who are responsible for overseeing EPA's compliance with the circular, told us that PCMD and program officials are generally responsible for monitoring contract costs and that EPA was not planning to develop any special procedures or criteria for determining when a support service contract is no longer cost-effective. A branch chief in that office, PCMD's Deputy Director, the Chairman of the Procurement Steering Group, and the Chief Budget Officer in the Superfund office again explained that OMB would not likely increase EPA's personnel ceilings even if hiring additional federal employees would be more cost-effective. However, in a November 1984 meeting with PCMD's Director, he told us that EPA is initiating a plan to monitor the costs of contracts which exceed \$10 million in total obligations.

To illustrate the potential effect of not monitoring contract costs, we reviewed one support service contract to determine if it might be more appropriate or cost-effective to use federal employees. We selected this contract because it was in the Superfund area, it was long-term in nature, and the contractor's employees were performing the same work as federal employees.

activities are not expected to end soon, even if the Superfund Program is not extended by the Congress, because EPA has emergency responsibilities under other legislation, such as the Clean Water Act.

The acting director also told us that in 1979, when the emergency response program was established, he conducted an abbreviated cost-comparison study which showed that hiring EPA employees would be less expensive than contracting for services. The program manager told us that he met with OMB and requested authority to hire federal employees, but OMB told him to use contract support instead. The current OMB examiners for EPA were not able to provide us with any information on why OMB may have directed EPA to contract for technical assistance team support. The OMB examiner for EPA in 1979 has since left OMB, and we could not find any documentation on the reasons why OMB may have told EPA to use contract support.

Although we did not perform a cost comparison between using federal employees and contractor employees, we attempted to determine if contract costs might be unreasonable. In doing this we talked with the Deputy Associate Administrator of OMB's Office of Policy, who is responsible for implementing A-76. The official told us that OMB has not published official guidelines for determining unreasonable costs prior to performing a cost comparison. However, the official told us that informally, OMB used a cut-off figure of \$50,000 a staff year. The official said that OMB uses this figure because it estimates the total average cost of a federal employee to be approximately \$50,000. If the cost of contractor services exceeds \$50,000 a year, it would be appropriate in most cases to review the contract and, if needed, conduct a cost comparison. In this specific contract the staff-year costs do exceed \$50,000 a staff year. On the basis of these cost figures and the other factors surrounding the contract, we believe EPA needs to monitor the contract costs and, if required, prepare a cost comparison. OMB's Deputy Associate Administrator agreed with this assessment.

OMB's Deputy Administrator also told us that Circular A-76 is guidance to federal agencies and that the actual implementation of the circular is the responsibility of each agency. He said that it is the intent of this administration to encourage the use of contracts. However, OMB would be willing to permit hiring federal employees when a good case is made that it would be more cost-effective. He also told us that the importance of monitoring contracts has greatly increased because cost comparisons are not always required for currently contracted work or new activities. As a result of this change, the monitoring of contracted work is the only procedure to ensure receiving reasonable prices in many cases.

PROPRIETY OF EPA'S CONTRACTING
FOR EMPLOYEE SERVICES

OMB Circulars A-76 and A-120² require that inherently governmental functions must be performed by federal employees. Individual agencies are responsible for deciding when a particular function is inherently governmental and must be performed by federal employees. In meetings with PCMD's Director, he confirmed that EPA has not established criteria to determine whether work is inherently governmental. Further, he agreed that EPA program officials do not review contract work prior to contracting in order to determine if it is inherently governmental because they do not believe EPA will be authorized to hire more federal employees even if the review showed that the work was governmental in nature.

The definition of an inherently governmental function is vague. The OMB circulars define an inherently governmental function as ". . . a function which is so intimately related to the public interest as to mandate performance by government employees." Inherently governmental functions include the discretionary applications of government authority, such as managing government programs requiring value judgments. Although contractors are prohibited from performing inherently governmental functions, the circulars do not prohibit contractors from assisting federal agencies in carrying them out. OMB, however, does not define the term "assist" or describe at what point contractor assistance ends and performance of inherently governmental functions begins.

In 1981³ we recommended that the OMB Director prepare written guidelines that would better distinguish between contractor's advice on government functions and their performance of such functions. In January 1982 OMB issued a proposed revision to Circular A-120 for public and federal agency review and comment, but has not issued new guidelines as of November 1984. The Deputy Assistant Administrator for Policy, the OMB official responsible for implementing Circular A-120, told us that OMB currently has no plans to issue any further clarification on using contractor and federal employees. He said that this issue must be dealt with by each individual agency.

Since the circulars do not contain specific criteria, it is difficult to determine when a contractor's actions move from assistance into performance. In the 13 contracts we reviewed, we noted that contractor employees performed functions which could, in our opinion, give the appearance of being inherently

²A-120 provides guidance for consulting services with respect to determining if work should be performed by federal employees or commercial sources.

³Civil Servants and Contract Employees: Who Should Do What for the Federal Government? (FPCD-81-43, June 19, 1981).

governmental in nature. For example, contractors met with public groups in gathering data for EPA, inspected hazardous facilities as part of the federal permit process, gathered and analyzed data for establishing policy, and frequently provided advice and briefings to agency officials on policy issues.

The following is an example of how EPA uses contractors in the Superfund Program. In 1983 the Superfund office was staffed with about 680 federal employees, and EPA contracted for about 640 additional staff years. According to Superfund Program managers, both contractor and federal employees were used to (1) collect information needed to establish policies and procedures for the Superfund Program, (2) respond to emergency hazardous waste and oil spills, (3) investigate reported hazardous waste sites to determine the risk they create, and (4) develop remedial action plans for cleaning up hazardous waste sites. Actual site cleanup is done by contractors under the direction of individual states or the U.S. Army Corps of Engineers.

On the basis of our previous reports and OMB guidelines, the primary criterion in determining whether a contractor is performing inherently governmental work hinges primarily on whether EPA retains final authority for establishing policy. We generally observed in the contracts we reviewed that EPA managers appeared to have adequate information to make independent judgments. The contractors appeared to primarily gather data for EPA as part of the decision-making process and were given policy direction by EPA. EPA did not, in our opinion, relinquish its authority to establish policy to the contractors.

CONCLUSIONS

EPA's use of contract employees to augment its personnel amounted to an estimated \$215 million in fiscal year 1983. EPA uses contractor employees primarily because it believes that it has an insufficient number of federal employees to carry out its programs. Additionally, EPA relies on support service contracts (1) because of uncertainty over the long-term size and mission of some EPA programs, (2) to gain contractors' expertise, and (3) to respond rapidly in an emergency.

We reviewed 13 support-service contracts to determine if it might have been cheaper or more cost-effective for EPA to use federal employees instead of contractor employees. We could not readily make this determination, however, because EPA had not made cost comparisons before awarding the contracts as required by OMB Circular A-76 in effect at the time contracts were awarded. In our opinion, according to the circular in effect at that time, cost comparisons would have been required in 11 of the 13 contracts. EPA officials said that there was very little likelihood that OMB would have increased its personnel ceilings even if EPA could have shown that using federal employees was more cost-effective than contracting for the services. Therefore, preparing the cost comparisons, in EPA's view, would not have served any useful purpose.

OMB Circular A-76, revised August 1983, does not require that cost comparisons be made for functions that are currently contracted or for new requirements. Instead, the circular encourages the use of contractor support and assumes that the price established by competition in the private sector will result in the lowest cost to the government. As a result, EPA is not required to prepare cost comparisons prior to contracting out new work requirements or when awarding new contracts for work already contracted out. The revised circular, however, requires agencies to continually monitor contract costs to ensure that the use of contractor services is cost-effective. In this respect, we found that EPA had not been monitoring contract costs as required. Therefore, we made a more detailed review of 1 of the 13 sample contracts to determine the potential effect of this lack of cost oversight.

The contract was a long-term contract for on-scene emergency response activities under the Superfund Program. The activities of both the contractor's employees and the EPA staff are identical, and the personnel have similar expertise. If EPA had monitored the contract, it might have found that a cost comparison was needed. EPA officials, however, again pointed out that EPA personnel ceilings are fixed annually by OMB, and these types of cost comparisons and oversight serve no useful purpose.

Regardless of the cost-effectiveness of support service contracts, federal regulations require that in general, the decision to use contractor or federal employees should be based on the nature of the work to be performed. Work considered inherently governmental in nature cannot be contracted out. Neither OMB nor EPA, however, has established criteria to determine the type of work that is inherently governmental in nature and must be performed by EPA employees. In addition, because it believes it cannot hire additional federal employees, EPA does not believe that developing these criteria is necessary because it has no alternative but to contract out for certain services even if they might be for inherently governmental functions. As a result, before awarding a support services contract, EPA does not attempt to determine whether the contractor will be used to perform functions that should only be performed by federal employees.

In the 13 support service contracts we reviewed, we found that contractor employees were, in many cases, performing work identical to EPA staff's. However, we believe that EPA was using these contractor employees primarily for assistance and was maintaining the authority to make program and policy decisions. Under this type of arrangement, however, there is potential that contractor employees could materially affect or influence EPA programs.

In summary, EPA has not established procedures and is not monitoring contracted work to ensure it is cost-effective. In our

opinion EPA has ignored these procedures because EPA officials believe that the size of its work force is established by the personnel ceilings set by OMB and that there is little likelihood that these ceilings can be increased. As we have reported in the past, personnel ceilings are a problem in trying to implement management requirements such as OMB Circular A-76.

RECOMMENDATION

To increase EPA's efficiency in using contractor and federal employees and to comply with OMB, Circular A-76, we recommend that the Administrator, Environmental Protection Agency, establish procedures for monitoring contracts for cost-effectiveness.

If the Administrator then determines that contracts are not cost-effective, EPA should follow Circular A-76 guidelines and look for more efficient contracting opportunities and/or prepare a cost analysis to determine if it would be more appropriate to do the work in-house, with government employees.

CHAPTER 3

EPA'S USE OF COST-REIMBURSABLE CONTRACTS

The Chairman requested that we determine (1) the extent of and EPA's rationale for using cost-reimbursable contracts and (2) the extent of subcontracting by prime contractors, including the additional cost to EPA associated with the subcontracting, and whether EPA was aware of the extent of subcontracting. We noted the following:

- In fiscal year 1983, cost-reimbursable contracts represented 88.2 percent of EPA's total contract obligations.
- EPA generally uses cost reimbursable contracts because they are easier and more flexible to use and reduce the work load of PCMD and program offices. Cost reimbursable contracts, however, are less preferred than fixed-price contracts because they provide contractors little incentive for efficiency, place a large administrative burden on both the federal government and the contractor, and place the maximum risk on the government.
- EPA contractors used subcontractors in 12 of the 13 contracts we reviewed. While EPA procedures require contractors to obtain EPA approval of all major subcontracts, we were unable to determine the overall extent or cost to EPA of using subcontractors.
- EPA directed work to be performed outside the scope of work in four of the eight contracts we reviewed. Technically, this violated federal procurement regulations and resulted in unjustified sole-source procurements.
- EPA circumvented federal procurement regulations by directing its contractors to award sole-source subcontracts to firms selected by EPA. EPA did this because it was quicker than using its own procurement office to obtain the needed services.

Overall, we found that in procuring contract support EPA has emphasized speed and flexibility at the expense of controls required by federal procurement regulations. We also found that EPA's routine use of cost reimbursable contracts results from EPA's mission orientation. Although we recognize the urgency of EPA's programs and the difficult nature of its procurement work load we found that EPA needs to achieve a better balance between speed of procurement and the advantages of following the thrust of the federal procurement regulations.

EXTENT OF AND RATIONALE FOR USING COST-REIMBURSABLE CONTRACTS

EPA's use of cost-reimbursable contracts rather than fixed-price contracts is the rule not the exception. For the period

from fiscal years 1977 to 1983, cost-reimbursable contract obligations represented about 88 percent of EPA's total contract obligations, or about \$280 million each year. While EPA may need to use cost-reimbursable contracts for much of its work, we believe that EPA could use more fixed-price contracts. EPA prefers cost-reimbursable contracts for many reasons, but mainly because the contracts provide speed and flexibility to meet changing needs and because the work to be performed is often difficult to define with sufficient precision to permit the use of fixed-price contracts.

Until 1976, EPA used small contracts to provide support to its program offices. But the large number of small contracts was causing problems in terms of adequate and timely service. To resolve these difficulties, EPA adopted a procurement strategy in 1976 on the basis of what is called mission support contracting. In essence, this contracting strategy can consolidate several like requirements into a single contract; involve a multiyear contract in support of long-range requirements; or engage a single contractor to manage and/or perform a comprehensive program, project, or mission. Mission support reduces the overall contract work load by reducing the number of contract actions needed to expend appropriated funds, and by providing a mechanism for obtaining quick response from contractors to meet program urgencies.

In implementing the mission support concept, EPA decided to establish a number of large cost-reimbursable contracts to support its major program offices. Under this concept, each of the major offices normally has one or more large contracts from which it can draw support as needed. For instance, the Superfund office, at the time of our review, had six major cost-reimbursable contracts that provide the majority of the program's support. In 1982 EPA had 29 large cost-reimbursable contracts, each with obligations exceeding \$5 million.

If the contractor is unable to provide the specific services required, it can award and manage subcontracts to perform the work. This approach provides the maximum possible speed in having work performed with a minimum of effort on the part of the program offices. Further, it has reduced the use of fixed-price contracts because small pieces of work suitable for fixed-price contracting are usually performed under broad cost-reimbursable contracts.

In meetings with the Director of PCMD and the Chief of the Procurement Policy Branch, these officials stressed that EPA's current approach to procurement is a matter of policy. This approach satisfies EPA's paramount concern, accomplishing contract work in a timely manner. In meeting with contract and program office personnel, we were told that EPA is under a heavy work load, program personnel are under pressure to accomplish tasks, and EPA must act quickly. The officials stressed the difficulty of balancing program needs against procurement requirements and that EPA officials in general have placed their highest priority on getting work performed as quickly as feasible. PCMD's Director provided us with these additional reasons for EPA's reliance on cost-reimbursable contracts:

- EPA needs quick response capability to deal with emergencies.
- EPA's work load frequently changes because of shifts in legislative priorities and as a result of new knowledge of the environment.
- EPA primarily purchases professional support services, particularly the collection and analysis of information that is extremely difficult to define with sufficient precision to permit the use of a fixed-price contract.

EPA's Procurement Review Steering Group identified various other reasons for EPA's extensive use of cost-reimbursable contracts, including a lack of policy guidance from EPA's top management. Although EPA has developed a policy of using mission-support contracting, this policy has evolved from middle-level management. At this time, top management has no clearly defined position on its contracting priorities. In addition, although EPA relies on mission-support contracting, there is no official guidance on that policy beyond a series of position papers and internal memorandums prepared in 1976 and 1977.

The steering group reported that the choice of contract type is primarily a decision made by EPA's contract and project officers, not EPA management. The steering group also reported that program offices' planning capability was inadequate. The group determined that because PCMD received inadequate information from the program offices on their needs, fixed-price contracts could not be awarded in a timely manner, and PCMD was forced to use cost-reimbursable contracts to provide more timely service. PCMD's Director agreed with this assessment.

Cost-reimbursable contracting has steadily become EPA's usual type of contracting, and in 1983 these contracts accounted for 88 percent of EPA's total contract obligations. The following table shows that on average, cost-reimbursable contract obligations represented 88 percent of EPA's total contract obligations during the 7-year period of fiscal years 1977 to 1983.

EPA's Use of Cost Reimbursable Contracts

<u>Fiscal year</u>	<u>Total obligations</u>	<u>Cost reimbursable obligations^a</u>	<u>Percent cost reimbursable</u>
	----- (millions) -----		
1977	\$ 217.0	\$ 175.1	80.7
1978	280.8	239.7	85.4
1979	308.7	262.3	85.0
1980	362.0	323.7	89.4
1981	356.0	326.9	91.8
1982	359.1	321.4	89.5
1983	<u>353.3</u>	<u>311.5</u>	<u>88.2</u>
Total	<u>\$2,236.9</u>	<u>\$1,960.6</u>	87.6

^aThe figure for cost-reimbursable contract obligations includes all cost-reimbursable contract types and also includes time and materials and labor hour contracts. These two contract types have the same advantages and disadvantages associated with cost-reimbursable contracts.

Disadvantages of cost reimbursable contracts

Federal procurement regulations regard cost-reimbursable contracts as a less preferred method of acquiring services than fixed-price contracts. The Code of Federal Regulations¹ states that

"The cost-reimbursement type contract is suitable for use only when the uncertainties involved in contract performance are of such magnitude that cost of performance cannot be estimated with sufficient reasonableness to permit use of any type of fixed-price contract."

The primary disadvantage of cost-reimbursable contracts is the lack of incentive for the contractor to be efficient. In the type of cost-reimbursable contract primarily used by EPA, the contractor is only responsible for making a good faith effort to complete the work at an estimated cost. The government is fully responsible for payment even if the final product is unsatisfactory or it exceeds the estimated cost. Under a fixed-price contract, however, the contractor is responsible for

¹Code of Federal Regulations (Sec. 41§1-3.405-5, July 1, 1982).

providing a specified final product at a fixed cost. In general, if the contractor's final products are not satisfactory, the government is not responsible for payment. Further, the government is normally not responsible for paying any costs which exceed the agreed price.

Cost-reimbursable contracts also place a large administrative burden on both EPA and the contractor. Because the contractor has limited incentive to be efficient and is not responsible for a final product, federal regulations require EPA to monitor the contractor to assure that the work is done properly and with maximum efficiency. Although a cost-reimbursable contract is administratively easier to award than a fixed-price contract, the administrative cost of effectively managing the contract far exceeds that of a fixed-price contract.

EPA's procurement officials have attempted to provide some incentive for efficiency by using cost-plus-award-fee cost-reimbursable contracts. This process pays the contractor for costs plus a fee which may not exceed 10 percent of the contractor's cost. Normally, this contract type establishes a base fee of 3 or 4 percent of the contracts cost. EPA then evaluates the contractor's work and determines the additional fee, if any, that the contractor will receive. For example, if EPA is not satisfied with the contractor's work, the contractor receives the base fee of 3 percent; if EPA believes the contractor's performance was efficient, the fee could be set as high as 10 percent of the contracts costs.

PCMD's Deputy Director told us that the cost-plus-award-fee concept has produced positive results, but he believes that the 10-percent fee permitted by federal regulations has limited the full benefits of the award-fee concept. In 1982, \$105 million out of \$321.4 million in cost-reimbursable contracts were of the cost-plus-award-fee type. EPA is working toward using award-fee contracts for all cost-reimbursable contracts over \$5 million.

EPA should use fixed-price contracts for some work assignments

Our review as well as internal EPA reviews have found that a portion of the work being performed under cost-reimbursable contracts is suitable for fixed-price contracting. However, neither we nor EPA has been able to determine the extent to which this occurs. In large measure, the use of cost-reimbursable contracts for work suitable for fixed-price contracting is a direct result of EPA's decision to use mission-support contracting. As mentioned previously, EPA has established several large cost-reimbursable contracts. As work is required by a program office, it is faster to issue a work assignment under an established contract than it is to develop detailed performance specifications, and advertise and award a fixed-price contract. This latter process can take from 6 months to a year, while a work assignment can be issued within a matter of days or hours.

We reviewed several individual work assignments in the eight cost-reimbursable contracts we reviewed. For these work assignments, we attempted to determine if they were suitable for purchase by fixed-price contract. In six of the eight contracts, a portion of the work appeared suitable for fixed-price contracts. For example, EPA used work assignments under cost-reimbursable contracts to build fences, remodel mobile trailers, and provide training courses. Because the work assignments were judgmentally selected, we could not project the total contract amounts that might be suitable for fixed-price contracting.

The Procurement Review Steering Group and four internal EPA studies performed in 1982 and 1983 also expressed concern about EPA's use of cost-reimbursable contracts because of their broad statements of work and indicated that fixed-price contracts could be used more extensively.

We discussed the use of cost-reimbursable contracts for work which appeared suitable for fixed-price contracts with PMCD's management. The officials agreed that EPA can reduce its use of these contracts and perform more work with fixed-price contracts. They explained that it is difficult to prevent individual work assignments which are suitable for fixed-price contracts from being issued under existing contracts. The officials told us that the source of control to prevent this from occurring is the contract officer who must approve the work assignment. However, as we discuss in chapter 4 (see p. 32), EPA's contract officers are not involved in contract management. As a result, the primary source of control to prevent performing work suitable for fixed-price contracting by cost-reimbursable contract is no longer effective.

The PCMD officials also told us that EPA needs the speed and flexibility cost-reimbursable contracts provide, and that much of EPA's work cannot be contracted for in any other manner because of the difficulty of precisely defining the work. The officials agreed, however, that EPA can use more fixed-price contracts. They explained that the issue was obtaining an adequate balance between the flexibility afforded by cost-reimbursable contracts and the increased competition and other benefits of fixed-price contracts.

SUBCONTRACTING UNDER COST-REIMBURSABLE CONTRACTS

The Subcommittee Chairman requested that we determine the extent of subcontracting by prime contractors, including the additional cost to EPA associated with the subcontracting and whether EPA was aware of the extent of subcontracting. Because EPA does not track subcontracting costs, we were unable to determine the overall extent of subcontracting by prime contractors and the additional cost if any to EPA of the subcontracting. We did find that EPA must approve all major subcontracts. We asked the PCMD Director why EPA does not collect subcontract cost information. The official told us that EPA is not required to collect this information. Further, EPA's

accounting systems have limited capacity for expansion. As EPA's steering group reported, the automated accounting and contract information systems EPA maintains are rather limited and do not maintain all of the information desirable for management oversight.

According to the program manager of EPA's contract information system, EPA does not maintain detailed cost information, such as the total amount of subcontracting, or the fees paid to prime contractors for managing subcontracts. The Contract Information System and the Financial Accounting System maintain EPA's contract information. Both systems track expenditures by contract, but according to the systems manager, neither system collects information on what portion of the payments went to the prime contractor and to its subcontractors. However, our review of 13 cost reimbursable contracts showed the prime contractor used subcontracting in 12 of the contracts. The use of subcontracting in the 12 contracts varied between 5 and 70 percent of the cost of the prime contract.

When EPA awards a cost-reimbursable contract, it requires that the prime contractor identify any significant portion of the work that will be subcontracted. EPA approves both the subcontractor and the subcontract type and evaluates the difficulty of awarding and managing the work to be subcontracted. If additional significant new subcontracting support is required on the basis of new work assignments, EPA also approves these subcontracts and the subcontract type.

The Subcommittee Chairman requested that we examine EPA's use of subcontracting in order to determine if it would be more cost-effective for EPA to award and manage these contracts rather than use prime contractors. We were unable to answer this question. To do so, we would need to make a cost comparison on a statistically valid contract sample to determine the cost difference between having EPA perform the work and having a prime contractor do the subcontracting. Preparing a number of statistically valid cost comparisons would be an exceedingly difficult, labor-intensive task.

EPA's Procurement Review Steering Group also examined this issue as part of its study on EPA's contracting. The group reported that there may be some savings to EPA because large cost-reimbursable contracts reduce the number of contracts to be prepared and supervised. However, the group was unable to determine if the savings are equal to the additional costs for having prime contractors perform the work.

EPA DIRECTED WORK OUTSIDE THE CONTRACT STATEMENT-OF-WORK

In four of the eight contracts we reviewed, EPA directed the contractor to perform work that was outside the scope of the contract. This is contrary to EPA and federal procurement regulations that permit this type of action only when adequate justifications are prepared and the contract's scope is formally

amended to reflect the change. Otherwise, the action results in an unjustified sole-source procurement and the loss of all the benefits that federal procurement regulations associate with competitive procurements.

One contract we reviewed was for technical support on emergency response to oil or hazardous material spills. This support was to be provided under a cost-reimbursable task order. This task assignment was for the contractor to respond, as directed by the project officer, to specific emergency situations related to control and cleanup of spills of oil and hazardous materials. This was identified as the sole-purpose for this work task. The contract was subsequently modified stating ". . . the work to be performed under task 30 of the contract will be defined in work assignments." However, some of the work actually done under task 30 included

- researching uncontrolled waste sites,
- preparing material for a training course,
- analyzing the economic impact of EPA's proposed plans for dealing with hazardous waste problems,
- determining the environmental effects of oil spills that occurred during the preceding year, and
- developing a cost analysis for facilities that may be subject to a proposed hazardous substance regulation.

EPA, however, did not amend the contract to reflect the change in the contractor's scope of work or prepare the required justifications to support using this contractor for these activities. Instead, EPA issued a work assignment directing the contractor to perform the tasks under the same financial arrangements included in the overall contract. Thus, EPA does not know if there were other firms that were as qualified or better qualified to perform the work or if it received the best price for the service rendered.

In another example, EPA awarded a cost-reimbursable contract to support one program office, but did not anticipate the need for any significant training support. Subsequently, the program office determined that \$3.8 million in training support was needed, and EPA assigned this work to the contractor. The project manager told us that this was done because of time constraints and because the contract was already established.

The training work was obviously outside the scope-of-work of the contract and, in our view, was of a nature that could have generated competition from other sources. Further, the work statement was specific, and it is possible that competition along with a fixed-price contract could have resulted in a lower price for the work. EPA, however, did not consider a fixed-price contract or attempt to solicit competition. Further, we did not find any documentation that would support EPA's need for a sole-source award in this case.

Although we found this type of occurrence in four of the eight contracts we reviewed, we also noted that EPA's program offices often issue work assignments under contracts of other EPA program offices. As mentioned previously, each major program office normally has at least one large support service contract from which it can draw technical support. While we did not audit any of these specific work assignments, we believe that they are, in effect, unjustified sole-source procurements that do not fit the scope-of-work of the overall cost reimbursable contract.

EPA DIRECTED SUBCONTRACT AWARDS

A directed sole-source subcontract award occurs when an EPA program office "directs" a prime contractor to award a sole-source subcontract to a firm selected by that office. Normally, the subcontractor works directly for the program office rather than the prime contractor, and often the work bears little resemblance to the prime contractor's mission at EPA. The program offices do this for expediency; the prime contractors do not have to follow all federal procurement regulations and can award a sole-source contract much quicker than EPA's procurement office. However, this process bypasses all the procurement controls that have been established to protect public monies and ensure that the government receives the best services at the most reasonable price.

In two of the eight cost-reimbursable contracts we reviewed, an EPA project officer directed the contractor to make sole-source subcontract awards. For example, one office directed a contractor to award a sole-source subcontract for about \$100,000 in printing and management services. This was done because the office needed a contractor to perform a specific task and did not wish to take the time to award a sole-source contract through normal procurement channels. Although we do not know the extent of directed procurements, we noted that one contractor's internal instructions to its contract managers stated that EPA directed it to award sole-source subcontracts as a common practice. We discussed this directive with PCMD's Director and EPA officials responsible for the contract. The officials agreed that EPA was in some cases directing sole-source subcontracts, but they could not comment on the frequency of such awards.

PCMD's management has taken action to curb the use of directed sole-source subcontracts. Internal memorandums by PCMD management in 1982 stated, "Under multi-task and work assignment contracts, there have been instances where the contract was simply used as a mechanism for issuing sole-source subcontracts. This practice is not acceptable." PCMD's Director told us that the division was increasing its review of work assignments in order to identify and prevent directed sole-source subcontract awards. PCMD officials told us that contract officers have been informed that these procurements are against EPA directives and plans to continue emphasizing to both project and contract officers the need to avoid this type of procurement.

EPA's Office of the Inspector General is concerned that EPA's use of directed sole-source subcontracts may be prevalent. In 1982, the inspector general made a broad review of EPA's programs, called a vulnerability assessment. The vulnerability assessment was intended to identify potential problem areas in EPA's operations. The vulnerability assessment report stated that the most vulnerable administrative area at EPA was the procurement function. The vulnerability assessment found that (1) sole-source contracts are not kept to a minimum and are not always consistent with program needs, (2) major anticipated contracts are not always included in procurement plans, and (3) close relationships exist between program office personnel and contractors that could easily lead to favoritism and unjustified sole-source awards.

OBSERVATIONS AND CONCLUSIONS

From the information we have collected, it appears that EPA's reliance on large mission-support contracts and its desire to get the work done quickly are the primary reasons that it (1) depends on cost-reimbursable contracts, (2) authorizes contractors to perform assignments outside the scope-of-work or objectives of the contracts, and (3) directs contractors to award subcontracts that circumvent federal procurement regulations. On the basis of this information, as well as our discussions with EPA officials, we believe that the contracting function at EPA is not given sufficient priority in relation to EPA's program goals. Program office and contracting personnel believe that they must contract as they do in order to accomplish important safety-related and sometimes politically sensitive missions as soon as possible.

While we agree that EPA, in some limited cases, might need to take extraordinary measures to accomplish program objectives, as a general rule it should be adhering to the requirements of federal procurement regulations. Among other things, these regulations require that (1) procurements be planned well in advance so that an orderly contract process can be completed in the time frames needed, (2) competition be solicited to the maximum extent possible, (3) fixed-price contracts be used in all cases where sufficient information is available to establish reasonably firm contract requirements and prices, and (4) contractors work within the objectives or scope-of-work of their contracts unless the necessary steps are taken to formally justify a change in those objectives.

During our review of 13 large cost-reimbursable contracts, we found that EPA was not adhering to these requirements. While our sample size did not permit us to make judgments about EPA's total procurement process, we believe that the problems we found are the type of situations that can occur when the procurement function does not receive sufficient priority.

RECOMMENDATIONS

We recommend that the Administrator, Environmental Protection Agency, take the necessary actions to increase the priority given to procurement operations. Among other things, this would include

issuing directives which reinforce (1) EPA and federal procurement regulations which require adequate procurement planning, (2) the need and rationale for soliciting competition and using opportunities for fixed-price contracts wherever possible, (3) the inappropriateness of directing contractors to perform work outside of their contracts' scope-of-work, and (4) the need to immediately stop any further directed, sole-source subcontracts.

CHAPTER 4

EPA CONTRACT MANAGEMENT NEEDS IMPROVEMENT

The Subcommittee Chairman requested that we (1) evaluate EPA's management of its contractors and (2) determine whether EPA was receiving useful, quality products from the contracts. We noted the following:

- EPA has not followed its contract management procedures. In particular, EPA is not maintaining clear lines of supervision and accountability and is not preparing detailed in-house cost estimates for controlling contractor costs.
- Work statements in EPA contracts did not specify the information to be included and methodology to be used in completing the final work product. As a result, we had no basis to judge the technical adequacy of these work products. In the contracts we reviewed, however, EPA personnel said that they were generally satisfied with the contractor's performance.

CONTRACT MANAGEMENT IS NOT EFFECTIVE

The Code of Federal Regulations requires that for cost reimbursable contracts, EPA maintain sufficient monitoring to ensure it receives a quality product at a reasonable price. Federal procurement regulations set higher standards of contract management for cost-reimbursable contracts than for fixed-price contracts because cost-reimbursable contracts place (1) minimum risk on the contractor to adequately perform the work assignment and (2) minimum incentive to control costs.

EPA's contract management directives establish three requirements which must be met to ensure a quality product and reasonable price. They include (1) establishing clear lines of supervision and accountability for contract management, (2) preparing detailed independent government estimates of the cost to complete work assignments, and (3) establishing objective measurable criteria for evaluating final products. These three procedures are intended to ensure close day-to-day supervision of the contractor, detailed cost analysis to prevent doing unneeded work, and the establishment of standards for evaluating the quality of the work. In the contracts we reviewed, EPA did not always follow these procedures.

We also found that EPA used project officers to carry out contract management instead of contract officers as required by federal procurement regulations. EPA's project officers lack the training or experience to act as contract managers and may not have the incentive to comply with EPA's contract management

procedures. The effect of this lack of oversight is to reduce the assurance that a quality product is provided at a reasonable cost. In this respect, the Code of Federal Regulations clearly recognizes that cost-reimbursable contracts place a large administrative burden on the government to control both performance and costs.

PCMD is not carrying out its contract-management responsibilities

Although PCMD is responsible for all aspects of EPA contracting, it has not provided active contract management since the late 1970's. Since that time, PCMD's highest priority has been awarding contracts and obligating funds; contract management has received a lower priority. In the late 1970's EPA program offices were not receiving, in their view, timely and adequate contract support from PCMD. The program offices believed that their contracting needs were not being met because of long lead-times in obligating funds, and difficulty in obtaining contract services. As a result, the program offices desired to increase the speed and flexibility of contracting and to become more involved in contract management.

PCMD officials are concerned that they have not been able to carry out their contract-management responsibilities. This concern is reflected in a September memorandum from PCMD's Director to the EPA Assistant Administrator for Administration which said in part:

"Traditionally, there has been a feeling that despite our pleading for additional resources, we always get the job done with less resources than we said we needed. Unfortunately, 'getting the job done' has referred to awarding contracts, or obligating funds and has not included managing and administering contracts after they are awarded."

PCMD's Director believes that EPA does not have enough contracting personnel to carry out all contract management responsibilities. He told us that his staff of about 200 professional and clerical personnel is insufficient to provide active contract management. He said that more contract officer involvement is needed to improve contract management and to balance the project officers' priority of accomplishing the work.¹

PCMD received authority for 18 additional positions for fiscal year 1984. However, PCMD could not provide us with an estimate of how many of the positions were used for contract management. PCMD does not collect information on contract officer time used for contract management. As a result, PCMD does not

¹See chapter 1, p. 1, for EPA's procurement work load.

have information on the extent of contract officer involvement in day-to-day supervision of contractors. Also, PCMD has not prepared an analysis of the resources which would be needed to provide adequate contract management. As a result, PCMD is unable to provide information on the resources it needs, and we were unable to determine if PCMD's lack of contract management involvement is due to a shortage of personnel. PCMD's top management also told us, although we did not confirm it, that a primary factor in evaluating the performance of contract officers is the total dollar value of contract obligations. We are concerned that evaluating contract officers on dollars obligated reduces the incentive to control contracts, which in general reduces the speed with which obligations are made.

Project officers are performing contract management

Federal and EPA procurement regulations regard the contract officer as the source of contract management control. Specifically, the contract officer, before approving work assignments, should verify that a detailed cost estimate has been prepared, sufficient personnel are assigned to provide day-to-day supervision of the contractor, and the statement-of-work is adequate to permit objective evaluations of the quality of the contractor's work.

Federal and EPA regulations limit the role and responsibility of the project officer to expediting the completion of quality work by providing technical direction to the contractor. This limitation exists because project officers are usually untrained and inexperienced in contract management and have a strong incentive to see that the work is performed and not necessarily with strong regard for controlling costs.

In the eight cost-reimbursable contracts we reviewed, contract management was the primary responsibility of project officers. Project officers were exercising authority that EPA regulations specifically limit to contract officers. For example, project officers issued work assignments without written approval of the contract officer and also directed contractors to perform work in excess of cost limits; only the contract officer is authorized to approve this action.

EPA requires that a project officer must be a knowledgeable program office official and must attend and pass a 5-day orientation program on project management. According to EPA, this course is not intended and does not provide sufficient information to permit a project officer to act as a contract officer. The material is only sufficient to enable the project officer to better assist the contract officer.

Project officers are not full-time contract managers and have other competing duties. As EPA's procedures manual for project officers states, "Project officers are most often performance-oriented people who do not always think of the impact of changes on cost and delivery schedules." Further, the chairman of the steering group told us that because contract officers are not actively involved in contract management, the most important factor in the quality of contract management and the resulting quality of work is the knowledge and experience of the project officer. The President's Civilian Task Force on Government Operations² reported in 1983 that EPA management noted that contracted work frequently did not meet internal standards in part because few project officers were trained or experienced in contract management. The report also noted that while there were some proficient project officers in EPA, an obvious need existed for a generally higher level of competence in this activity.

Contract oversight needs improvement

EPA procedures for managing cost-reimbursable contracts regard the establishment of clear lines of supervision and accountability as critical to effective contract management. EPA's procedures require a direct chain of accountability. In this chain the project officer decides on the technical direction of the work, and after receiving approval from the contract officer, provides orders to the contractor. No other EPA employees are authorized to provide directions to the contractor. This arrangement provides a number of controls: (1) the contractor does not receive conflicting instructions, (2) all orders are reviewed by the contract officer to ensure they protect the government, and (3) a clear line of accountability is established since only two individuals--the contract and project officers--provide instructions to the contractor.

There are numerous problems when these lines of supervision and accountability are not maintained. Without clear lines of supervision, contractors can receive conflicting orders which waste resources. Without clear lines of supervision, it is not possible to pinpoint accountability. Finally, without clear lines of supervision, it is possible for the contractor to receive little oversight and supervision. The essence of the problem is that when everyone is able to provide instructions and supervision, it is relatively easy for no one to provide oversight.

²Report on the President's Private Sector Survey on Cost Control, Task Force Report, on the Environmental Protection Agency, page 33, April 4, 1983.

In eight of the contracts we reviewed, EPA's provisions for maintaining clear lines of supervision were not followed. The contracts were primarily multimillion-dollar contracts that involved large numbers of work assignments. For example, one contract included over 100 work assignments. The contracts also involved work assignments from a number of program offices, and all but one contract had work performed simultaneously at widely separated work sites.

A large number of program office personnel, in addition to the project officer, were providing instructions and orders to the contractor in the eight contracts. Because of the large number of work assignments, widely separated work locations, and unclear lines of authority, we could not determine the exact number of EPA personnel providing orders to the contractors. We estimate that one contract had as many as 10 EPA personnel providing orders, and contractors appeared willing to take instructions from any EPA employee.

Our primary concern is that contractors in the eight contracts we reviewed did not appear to be receiving close day-to-day supervision. When EPA does not maintain clear lines of supervision and accountability, it becomes difficult to ensure that contractors receive adequate oversight. This oversight is absolutely critical to maintaining control of cost-reimbursable contracts. The effect of EPA's not following its procedures is that some contractors do not receive adequate oversight, EPA is unable to determine who gave what orders to the contractors, and contractors were given instructions that violate EPA's procurement procedures.

The following examples illustrate what can happen when clear lines of oversight and supervision are not maintained:

- On the basis of the orders of a program official, a contractor began work to prepare a new safety plan before receiving authorization from the contract officer. The contract officer wanted an already developed safety plan revised and updated. By the time the authorization and instructions to revise the old plan and not to develop a new plan were received, a new safety plan had been completely developed. We could not determine the cost of the new plan because the contractor did not have cost data to this level of detail.
- The contract officer's approval to begin a work assignment was dated about 6 months after the contractor began billing for the work. The contract officer told us that the project officer must have given the contractor verbal authorization to start work.

--A contractor submitted, and EPA approved, a work plan for specific work assignments at a hazardous waste site. By September 1982, the contractor's costs for this work assignment exceeded the approved funding for the work. Although the contract officer did not approve any additional funding, the contractor continued working on the assignment through January 1983, on the basis of instructions from program personnel. EPA paid about \$35,000 more than the funding approved through September 1982.

--A company performed work for 2 years without a contract, only on the basis of verbal instructions of an EPA project officer. In general, ordering a contractor to perform work without a valid contract violates federal and EPA procurement directives. EPA may have no recourse except to issue an after-the-fact contract and pay for the work already performed by the contractor.

EPA contracting officers and Office of General Counsel personnel told us that EPA has frequently permitted employees who are not designated as contract officials to give contractors instructions and then has accepted the validity of the instructions and paid the contractors. This has created a situation in which contractors have a legitimate expectation that EPA will pay for work even if the procedures for work authorization and contract award are not followed.

QUALITY OF CONTRACTOR WORK IS DIFFICULT TO EVALUATE

EPA's procurement directives stress the necessity of evaluating the quality of contractor work. This provides EPA assurance that it can rely on the information provided by the contractor, provides a basis for using the contractor in the future, and in some cases is the basis for incentive payments. To properly assess the quality, the directives require that detailed statements-of-work be prepared. This (1) helps assure that program personnel have thoroughly thought out what work needs to be done and how it will be done, (2) provides the basis for preparing a detailed cost analysis, and (3) provides criteria so that an objective basis is established for determining work quality.

EPA's guidance to its project officers stresses that the ultimate quality of the final product depends on the quality of the statement-of-work. This guidance states that the project officer should establish meaningful parameters of measures to prevent the contractor from expending effort not pertinent to the goal, objective, or target and to measure the results of the completed work.

EPA's cost-reimbursable contracts usually contain broad statements-of-work. As work requirements are developed by project officers, the anticipated scope of work and product become more specific. In most cost-reimbursable contracts, however, the final product is usually information or a report and is not easily quantified and evaluated. It becomes important, therefore, that the individual work assignments contain specific information on what is expected, such as a description of the final product, the information it will contain, and the methodology to be used in collecting it. The more specific EPA makes the directions given to the contractor in the work assignment, the greater the likelihood EPA will receive a work product that it can use.

In the eight contracts we reviewed, EPA did not generally prepare detailed statements-of-work for individual work assignments. EPA's contracting reviews have identified similar problems with unspecific work assignments. EPA's steering group reported,

"There seems to be a pervasive theme throughout procurement that project officers fail to appreciate the importance of a thoughtfully written statement-of-work. Program people appear not to realize that it is highly difficult (if not impossible) to force a contractor to comply with any requirements other than those clearly set forth in the statement-of-work."

To evaluate the quality of contractor work, we used these different approaches: (1) we examined selected work products to determine their technical adequacy, (2) we met with EPA program and contract personnel who were responsible for the work to obtain their subjective judgment of work quality, and (3) we reviewed past audits by EPA's Office of Inspector General as well as our past reports on EPA contracting. Overall, all of these assessment efforts proved to be unsuccessful.

We attempted to evaluate the technical adequacy of final work products from a limited number of judgmentally selected work assignments from eight contracts. Our efforts to evaluate the technical adequacy of these final products was unsuccessful. In the work assignments we reviewed, EPA had not established sufficiently detailed specifications on how the work was to be performed or the information to be contained in the final product to permit an evaluation of the product's technical adequacy.

We met with OMB's Deputy Associate Administrator responsible for implementing OMB Circular A-76. The official told us that OMB has found inadequate performance specifications to be a government-wide problem. OMB is starting a series of initiatives to improve performance specifications because OMB believes that without detailed performance specifications, the government cannot assure that it is receiving quality work at reasonable prices.

In reviewing contractor work, we met with the contract and project officers in charge of the contracts to obtain their subjective evaluations of product quality. EPA personnel in charge of the eight cost-reimbursable contracts we reviewed said that overall, they were satisfied with the quality of work. Several of the officials told us that because the work is done under cost-reimbursable contracts, if they are not satisfied, they have the contractor continue working until they are satisfied.

In reviewing past efforts to evaluate contract work, we found that these studies have focused on determining if a product was received. For our 1982 report on EPA's use of management support services, we selected 30 contracts for detailed review. We concluded that in 10 of the 30 contracts, the work products received by EPA were of questionable value and no work product was received for 1 contract. In determining that the work products from 10 contracts were of questionable value, we primarily relied on the judgment of the project officer who managed the contract. EPA contract reviews by the inspector general also found cases where EPA did not receive final products. For example, in 1981 the inspector general found that ". . . contract end products were not always received in a timely manner, and in an significant number of the cases reviewed the end products had not been received at all."

Our overall finding on work quality is that without well prepared, detailed statements-of-work, it is extremely difficult to factually assess the technical quality of contractor work. Because EPA does not prepare adequate statements-of-work, both we and EPA must rely on the subjective judgment of the program office personnel who requested and managed the work. Until EPA prepares detailed statements-of-work, we will not be able to satisfactorily answer the Chairman's question "is EPA receiving useful quality products?"

BETTER EPA COST ESTIMATES WOULD PROVIDE BETTER COST CONTROL

Because cost-reimbursable contracts do not usually provide contractors with an incentive to control costs, EPA procurement directives stress the importance of cost-control procedures. These procedures require that EPA procurement personnel independently prepare a detailed cost estimate based on the statement-of-work. The cost estimate assures that EPA knows what work the contractor will perform, the level of detail at which the work will be performed, and the technical quality of the personnel performing the work. Without a cost estimate, EPA is in effect telling the contractor that it wants a particular piece of work done and permitting the contractor to decide how to do the work. Using the in-house cost estimate and the contractor's estimate, EPA procedures require a cost analysis of the two estimates. The cost analysis is intended to ensure that the contractor limits its effort to only performing sufficient work to meet EPA's needs.

Without a detailed cost analysis, EPA has in effect little control over the cost of contractor work.

For the work assignments under the eight contracts we reviewed, EPA prepared cost estimates, but they were not based on the actual steps necessary to carry out the work, the difficulty of the work, or the time the work would require. In general, the EPA estimates lacked detailed documentation on how they were developed and any detailed breakdown of the cost components making up the estimate. Overall, we found the cost estimates in the work assignments we reviewed to be a pro-forma exercise in meeting a procurement requirement. Rather than being a tool to control the contractor's work, the cost estimates were instead a cursory justification of the contractor's judgment on how the work should be done. Further, EPA's Procurement Review Steering Group reported that frequently, EPA estimates were developed by having the project officer copy the cost estimate from a similar project.

For the contracts we reviewed, we also found that EPA's cost analysis of the contractor's cost estimate appeared to be superficial. We did not find documentation which showed a comparison between the work needed and the contractor's approach to completing the work. In our opinion, performing a detailed cost analysis was quite difficult because work assignments did not contain sufficient information for evaluating the effort required to complete the final product.

For example, one work assignment included eight tasks to be performed at a hazardous waste site. EPA estimated that 1,900 hours were required to perform the tasks. The contract officials were unable to provide us any supporting documentation showing how the 1,900-hour estimate was developed. In particular, we did not find a detailed breakdown of the work to be done or estimates of the difficulty and time required to perform each task. The 1,900-hour estimate represented a best guess. The contractor's work plan estimated 4,296 hours for the assignment.

Because it had no detailed cost estimate or a detailed statement-of-work, EPA did not have sufficient information to analyze the reasonableness of the contractor's 4,296-hour estimate. A detailed estimate or statement-of-work would have given EPA a basis to analyze the contractor's approach and assure it was reasonable and did not involve more work than the minimum needed to accomplish the work. EPA made a number of minor revisions and authorized the contractor to begin working.

In another case, the EPA project officer did not develop an estimate of the cost to perform a work assignment because he believed the work would cost less than \$10,000. He concluded that it would not be efficient to prepare a cost estimate. EPA also told the contractor not to prepare an estimate for an EPA cost analysis because the work was relatively limited.

As of May 20, 1983, the work assignment had cost about \$125,000 and had not yet been completed. If EPA had considered--before allowing the contractor to start work--more precisely what effort was required in the work assignment, it would have had some basis to evaluate and control the contractor's approach to completing the work. Unless EPA has a detailed understanding of the work to be performed, it lacks the knowledge to prepare its own estimate or analyze the contractor's estimate.

CONCLUSIONS

The Code of Federal Regulations requires that EPA provide a level of contract management sufficient to assure receiving a quality product at a reasonable price. EPA procedures which are intended to provide this assurance stress three elements for providing contract control: cost estimates, detailed supervision, and criteria in the statement-of-work against which the contractor's final work products can be evaluated. However, EPA is not complying with these procedures. EPA problems in managing cost-reimbursable contracts include (1) not establishing clear lines of supervision and accountability for contract management, (2) not developing detailed independent cost estimates in order to analyze contractor costs, (3) not preparing detailed statements-of-work showing the specifics to be included in the final work product, and (4) a lack of involvement by EPA's contract officers in managing contracts and the use of untrained program office personnel to provide this management. As a result, EPA does not have an adequate basis to evaluate the reasonableness of contractor costs and can only subjectively evaluate the quality of final products.

EPA relies on cost-reimbursable contracts to provide speed and flexibility in accomplishing its work. A primary drawback of this form of contracting is the imposition of extensive administrative costs to provide control as the work is performed. EPA, however, is not expending the resources, primarily staff time, to provide this control. The development of detailed statements-of-work, indepth cost analysis, and the preparation of objective quality of work assessments requires time, work, and, in many cases, delay until these control procedures can be used. In our opinion, EPA is not following its contract management procedures for the same reason it uses cost-reimbursable contracts--the need for speed and flexibility. Further, we believe that the combination of cost-reimbursable contracts and reduced control presents the potential for EPA's receiving low quality and overly costly work products.

Both EPA and federal procurement regulations regard the contract officer as the critical focus for management control. The contract officer is not responsible for developing statements-of-work, preparing cost estimates, or evaluating the contractor's work. The contract officer is, however, required to ensure that the project officer takes these actions prior to permitting the

contractor to initiate work. In our opinion, contract officers are not requiring these controls because EPA's contract priority is speed and flexibility. In essence, EPA has removed responsibility for contract management from PCMD and given it to the individual program offices. The reason for this is the time constraints that active contract officer involvement imposes.

RECOMMENDATIONS

To improve controls over EPA's contract management, we recommend that the Administrator, Environmental Protection Agency, require PCMD to carry out its contract management responsibilities by having the contract officers become more involved with monitoring work assignments as required by EPA and federal regulations. The administrator should require contract officers to not approve individual work assignments unless the assignments are accompanied by (1) a detailed statement-of-work showing specifics to be included in the final work product and (2) a detailed cost estimate. If necessary, a compliance program should be established to ensure that contract officers meet this requirement.

If resources are not available to carry out these responsibilities, the administrator should determine the additional staff needs and provide this information to the appropriate congressional committees for their consideration. These actions are necessary to reestablish a better balance between speed in accomplishing program objectives and management control.

CHAPTER 5

MAXIMA CORPORATION'S CONTRACTS FOR CLERICAL SUPPORT SERVICES

The Maxima Corporation has been awarded two contracts for about \$500,000 each for typing, photocopying, and editing assistance to EPA in connection with its responsibilities under the Toxic Substances Control Act. The Chairman asked us to examine the following aspects of these contracts: (1) the award procedure, (2) compliance with OMB contracting policies for sole-source procurements, (3) whether the contractor was performing tasks which should have been performed by EPA employees, and (4) whether EPA personnel were supervising contract employees.

We found that EPA complied with OMB contracting policies, that EPA personnel did not supervise Maxima employees, and that clerical work is appropriate for contractor performance. In addition, we found that EPA paid about \$240,000 to Maxima because a minimum purchase clause in the contract was not met. We expressed concern about the appropriateness of the payment to Maxima, and after meeting with us, EPA's Office of General Counsel concluded that the payment was incorrect. Subsequently, EPA's Office of General Counsel told us that it is taking action to recover any overpayment.

EPA'S CONTRACT AWARD TO MAXIMA COMPLIED WITH OMB PROCEDURES

The Toxic Substances Control Act of 1977 requires EPA to review information provided by chemical companies on new chemicals. The program requires extensive clerical support, including typing, photocopying, and editing. Because of staff reductions in 1981, the Office of Toxic Substances was unable to meet its clerical support needs and decided to hire a contractor.

The Maxima contracts were awarded under Section 8(a) of the Small Business Act. The 8(a) program authorizes the Small Business Administration to contract with other government agencies and to arrange to have work performed by socially and economically disadvantaged small businesses.

The Small Business Administration recommended Maxima to EPA. Maxima submitted a work proposal to EPA, which EPA considered to be technically acceptable. In August 1981, EPA awarded a contract to provide clerical support at EPA headquarters in Washington, D.C. The contract was a fixed-price, indefinite quantity contract. A fixed-price, indefinite quantity contract specifies the unit cost of the items of work called for in the contract but leaves open the number of units. For example, the contract specifies the cost per page of typing services but not the number of pages to be typed. The initial contract was for 1-year, with two 1-year options, and required a minimum purchase of \$500,223 in the first year. EPA also contracted with Maxima for a second year at a cost of \$515,000.

While these contracts represented sole-source procurements, there is no legal objection to such procurements under the 8(a) program. To further a socioeconomic policy of fostering the economic self-sufficiency of certain small businesses, section 8(a) authorizes a contracting approach which, in general, is not subject to competition and procedural requirements of federal procurement regulations. Thus, noncompetitive awards under the 8(a) program are not legally objectionable solely because others might have been able to compete for the award.

With respect to compliance with OMB contracting policies, OMB Circular A-76 states that it is the federal government's policy to rely on the private sector for its commercial services. The primary exception to this policy is the requirement that inherently governmental functions be performed by federal employees. According to the circular, clerical support services are suitable for contracting and do not involve an inherently governmental function. As a result, these services can be performed by contract and not by federal employees.

SUPERVISION OF MAXIMA EMPLOYEES

As a general rule, personal services for the government are required to be performed by federal personnel under government supervision. A proper contract for services is one where the relationship established between the government and the contract personnel is not that of employer-employee. Where services are obtained by contract, the question of whether contractor personnel are functioning in an employer-employee relationship is one of supervision. If contractor personnel are supervised by a federal employee, the contract is not for independent services but involves procuring personal services to avoid civil service regulations.

The EPA project officer in charge of the Maxima contract told us that all work assignments are made through an employee of Maxima who supervises the Maxima staff. He also said that EPA provides no direct supervision; all supervision is performed by Maxima's supervisor. We noted during an unannounced tour of the Maxima site that the supervision was being provided by Maxima personnel. We also talked with Maxima and EPA employees, all of whom told us that all supervision was provided by the contractor's staff and not by EPA employees.

EPA EFFORTS TO RECOVER ANY CONTRACT OVERPAYMENTS

The first Maxima contract, which became effective September 30, 1981, required a minimum purchase by EPA of \$500,223 in support services during the first year. The amount of work the Office of Toxic Substances sent to Maxima, however, was much lower than had been anticipated, and payments to Maxima were far less than the \$500,223 contract amount. On October 31, 1982, Maxima prepared a voucher for \$267,873, which represented the difference between the amount Maxima had received for the first 11 months of the contract and the minimum order requirement at \$500,223. The

contract officer told us that the \$267,873 amount included a \$240,000 payment to satisfy the guaranteed amount. EPA paid Maxima the \$267,873.

We discussed this payment with EPA's Office of General Counsel. We told the general counsel that we were concerned that the payment might be inappropriate and that the contract might have been terminated for the convenience of the government. EPA's contract with Maxima included a general provision known as the Termination for the Convenience of the Government clause. EPA's guidance on the clause states:

"Under the Termination for Convenience clause, the Government has a right to cancel work under a contract whenever it determines that it is in its best interest. Such a decision is a unilateral right of the Government. It is not, however, a decision that can be made lightly. Cancellation of the work under contract is an expensive and undesirable course of action. Generally, such terminations occur because of changes in Government requirements. The contractor agrees that the Government has the right to terminate the contract, in whole or in part. In return, the Government agrees to pay the contractor its costs plus a reasonable profit on work done and preparations made on the terminated portion of the contract."

EPA concluded that the contractor was entitled to receive payment for any expense caused by EPA's not meeting the minimum purchase requirements. However, the contractor received a payment of the difference between the amount purchased and the minimum requirement. If EPA had purchased the minimum support agreed to in the contract, the contractor would have had to pay the expense of having the work done.

The Office of General Counsel attorney assigned to the Maxima contract advised us he had sent a letter to the contractor requesting a refund. The attorney informed us in December 1984 that Maxima has appealed EPA's request for refund. A hearing is expected to be held before a board of contract appeals at some future date to resolve the question of the payment.

EPA'S CONTRACTING INITIATIVESTO STREAMLINE THE PROCUREMENT PROCESS

The Subcommittee Chairman requested that we evaluate recent contracting changes made by EPA to determine if they would have a meaningful impact on EPA's procurement process. The Chairman was particularly interested in changes EPA made in its conflict-of-interest procedures and the reasons it delayed implementing of these procedures.

In 1982, EPA established a Procurement Review Steering Group to examine EPA's use of procurements. The steering group reviewed seven major areas in the procurement process: (1) procurement development (how procurement actions are initiated), (2) solicitation, (3) evaluation and source selection, (4) negotiation, review, and award, (5) contract administration, (6) procurement planning, and (7) policies, procedures, and reporting.

The steering group made various recommendations designed to improve the procurement process in several ways, including streamlining the procurement process by eliminating redundancy and reducing paperwork. EPA began implementing the steering group's recommended changes in 1983 and, according to PCMD officials, completed their implementation in 1984. We could not evaluate the effect of the changes since they were implemented during and after our review. Although we believe the changes have potential to improve EPA's procurement process, the changes do not address our major concern, that is, the procurement function's low priority at EPA. We are concerned that EPA has given priority to contracting speed and flexibility versus contract management control. We also noted that a common theme of the steering group's recommendations in reducing contract award time and paperwork was to eliminate various levels of review. The reduction in review levels will reduce paperwork and award time but do so at the expense of oversight. Until these procedures are in place, evaluating the trade-off between speed and oversight will not be possible.

PROCUREMENT DEVELOPMENT

To obtain procurement support, EPA program offices prepare a procurement request rationale document. The document is used to convey information needed by the contracting officer in purchasing the requested support. For example, the project office must provide the type and amount of support needed and information on where and when the program office wants the work done. The steering group found that the request document was difficult to prepare, required information available in other procurement documents, and required information which was applicable to only a small number of procurements. In addition, the information contained in the request document was not standardized, which made it difficult to check that all needed information was provided. Overall, the steering group found that the request rationale

document had evolved into an overly elaborate document that contained large amounts of unneeded information. Other problems in the procurement development process included unnecessary approval levels, underutilization of small- and minority-owned businesses, and the use of unneeded milestone agreements between PCMD and the program offices. The steering group's recommendations have resulted in the following changes:

- The procurement request rationale document has been standardized to increase uniformity. To reduce unneeded information, the document has been revised into a checklist.
- To reduce paperwork, information which applies to only a small number of procurements is no longer required on all procurements.
- EPA had required that the Associate/Assistant/Regional Administrator review and approve all procurements over \$100,000. This review and approval is now required only on contracts over \$250,000.
- EPA had required the preparation of milestone charts on all procurements over \$100,000 as a management tool. Milestone charts are now required only when the procurement exceeds \$2 million.
- PCMD had been responsible for identifying contracts that could be awarded to small- or minority-owned firms. This responsibility has been transferred to the program offices.
- EPA's procedures required up to seven reviews for a sole-source procurement over \$250,000. By eliminating intermediate levels of review, EPA reduced the number of reviews for approval of a sole-source procurement.

SOLICITATION

After EPA has developed its procurement needs, it solicits bids for performing the work through a request for proposal. The steering group found that EPA's request for proposal had a number of problems: (1) the instructions to contractors for preparing bids were unclear and (2) all bidders were required to submit information that is only needed from bidders found to be competitive. The steering group recommendations have resulted in the following changes:

- EPA revised its instructions to bidders in order to make them clearer and easier to follow.
- Information that is only needed for negotiation with competitive bidders is no longer required on the initial bid.

An example of the kind of information EPA had required from all bidders is the statement on general financial organizational information. Preparing the report requires considerable staff time on the part of the bidder. EPA had required the report from all bidders. EPA now requires the report only from those bidders that are evaluated and considered technically qualified to do the work.

EVALUATION AND SOURCE SELECTION

After EPA receives bids in response to a request for proposal, a number of steps must be taken to evaluate and select the best firm. The steps in the process include (1) a technical evaluation, (2) a business evaluation, (3) a cost evaluation, and (4) negotiations with the most competitive bidders. In addition, EPA requires numerous administrative reviews to keep upper level management familiar with the procurement's status. A final step prior to contract award is a review by a source evaluation board. The board is made up of senior managers who review procurements over \$2 million and issue a statement of findings to assist the final selecting official.

The steering group found problems in each of these areas. The steering group's recommendations have resulted in the following changes.

Technical Evaluation Panel

The evaluation panels use a scoring system of 0 through 4, with each number corresponding to 25 percent; the system did not permit assigning a fractional score, such as 2.5 or 62.5 percent. The steering group concluded that the use of fractional scores would result in more useful technical evaluations with greater differentiation between firms with bids of similar technical quality. The group also concluded that EPA was using technical evaluation panels for too many low-value procurements. This was believed to result in overly costly evaluations and to unneeded delays in performing technical evaluations.

The steering group recommended (1) revising the scoring system used by the Technical Evaluation Board to allow fractional scoring in evaluating competing bids and (2) for procurements under \$500,000, the technical evaluation of competing bidders should be performed by the contract officer instead of a technical panel.

Evaluation of Past Performance

The steering group concluded that contractors' past performance does not appear to have been a significant factor in distinguishing between contractors unless the selection process reaches the point where no clear-cut difference is apparent. It further concluded that greater emphasis and

weight on technical and business past performance earlier in the selection process could ensure better contractor selection.

The group recommended increasing the emphasis given to past performance in evaluating contractors for new contracts.

Cost Analysis Panels

The group concluded that cost analysis panels were being used on low-value contracts that could be adequately evaluated by the contracting officer.

The group recommends (1) that for procurements under \$500,000, the cost evaluation of competing bidders should be performed by the contract officer rather than a three-person cost-evaluation panel and (2) the use of more informal cost analysis procedures to reduce paperwork and staff time.

Source Evaluation Board

The group found that the use of Source Evaluation Boards frequently lengthened the time for procurement without providing meaningful assistance to the selecting official. A major difficulty was scheduling board meetings on the basis of the number and high level of board members.

The group recommended raising the review level for using Source Evaluation Boards from \$2 million to \$5 million.

Negotiation Procedures

The group found that EPA's negotiation procedures were inflexible and forced the use of one negotiation approach on all procurements. It concluded that contract officers needed more flexibility in handling negotiations. The group also found that in practice, negotiating procedures frequently resulted in final cost negotiations with only one firm, and since most firms were aware that EPA normally only held negotiations with one firm, the firms were reluctant to make cost concessions since they knew that they had in effect already won the contract and did not need to lower their bids.

The group recommended establishing two sets of evaluation and negotiation procedures to provide contract officers with greater flexibility in (1) deciding the number of firms to hold final negotiations with and (2) reducing the frequency of final negotiations with only one firm.

Administrative Reviews

The group found that EPA's procedures called for frequent top-level administrative reviews. In many cases it was unclear what benefits resulted from the reviews.

The group recommended eliminating a number of administrative reviews previously used in different phases of each procurement.

NEGOTIATION, REVIEW, AND AWARD

The steering group found a number of problems with EPA's use of prenegotiation plans and with the debriefing of unsuccessful bidders. EPA uses a prenegotiation plan when it has selected a firm for contract award and the final technical requirements and cost are being negotiated. The steering group found that the procedures used at its three procurement centers were substantially different and that there were wide variations in the documentation prepared after the negotiations were completed.

The group concluded that on balance, consistency and uniformity were not enough to justify establishing formal procedures for prenegotiations plans and summary of negotiation reports. The group agreed that documentation was necessary, but that its format and scope should be communicated through training and not through policy.

EPA regulations require that unsuccessful bidders receive, at their request, an explanation of the deficiencies in their bid. The primary purposes of the debriefing are to (1) assist contractors in making better bids on future contracts and (2) allow the bidder to determine whether they should seek recourse against exclusion. The steering group was also concerned that inexperienced contract officers might be providing confidential information to unauthorized persons during informal briefings about the technical and price approach of other bidders. The group stressed the importance of using the formal debriefing process instead of informal briefings.

The steering group found the current procedures to be both workable and flexible and recommended that the procedures be continued. However, the steering group also recommended that (1) EPA emphasize the need for formal debriefings and enforce existing standards, (2) all debriefings be conducted by teams which include procurement and program personnel, (3) a debriefing checklist be developed, and (4) the debriefing function receive more emphasis in the project officer training course.

CONTRACT ADMINISTRATION

The steering group found a number of problems with EPA's contract administration, especially contract closeout and opportunities to reduce paperwork requirements. Contract closeout, among other things, involves the final collection of contract information, preparation of a work assessment evaluation, and a final audit to assure that all expenditures were reasonable. The steering group found that EPA was having extensive difficulties completing contract closeouts. The steering group found that the backlog of contracts that were physically completed in fiscal year 1979 or

earlier, but not yet closed out was estimated to be 1,200. This estimate does not include contracts completed in fiscal years 1980 through 1984 that were not yet closed out.

The steering group found the primary problems with contract closeout were (1) difficulties in pulling together the required information, which is complicated by a high turnover among project officers, (2) a lack of motivation among EPA personnel who place their priority on contract award while ignoring closeout, (3) conflicting instructions to contractors on processing final vouchers, and (4) delays in obtaining final audits.

The steering group also reported that it was often difficult to find a program official who was in charge of the contract. The group found that project officers frequently left EPA without turning over their contract responsibilities to a new project officer. Project officers frequently delegated their contract responsibilities to other program personnel, and program offices often lost their projects to other program offices because of re-organizations. As a result, when PCMD did the contract closeout, it was often difficult to find a program official who had the necessary information about the contract to complete the closeout.

The steering group also identified a number of opportunities to reduce paperwork and reporting requirements that provided little benefit in relation to cost. To reduce paperwork, the steering group identified areas where forms and reports could be combined and standardized. In addition, they identified a need to develop standardized contractor reporting forms for making cost and progress reports. The steering group also made a number of recommendations to improve contract administration, including

- establishing a liaison in each program office to track and maintain information on the project officer assigned to each contract;
- establishing checkout procedures for project officers, leaving EPA to assure that a new project officer is assigned to the contract;
- expanding the use of accelerated closeout procedures to reduce the backlog of contracts awaiting closeout; and
- developing standardized forms for contractor progress and financial reports to enhance proper contract monitoring.

PROCUREMENT PLANNING

EPA's Contract Planning System was designed to assist PCMD in performing its procurement function. Because of the importance of planning to the entire procurement process, we are restating the steering group's overall conclusions and recommendations.

The Contract Planning System was the predominant issue addressed by the steering group in module 6. While discreet issues surrounding the system were analyzed by the steering group, this discussion and the supporting issue paper incorporate the work of a group of individuals who focused on these interrelated issues.

The Contract Planning System was designed to help the procurement office better anticipate annual work-load requirements determined by program demands and to improve the process of developing, submitting, and processing contract actions. Over time, there has been grafted to this primary function the use of the Contract Planning System to track how well the programs complied with their respective plans.

Currently, programs are required to prepare fairly specific annual plans by a given date and provide updated annual plans as changes occur. The plans require approval by senior program management. Eighty-five percent of available contract dollars must be submitted for commitment by April 30 or be subject to potential impoundment.

A major problem with this system is that these plans are prepared at a time when it is difficult for most programs to estimate specific requirements completely and when program staff is preoccupied with budget preparation. Furthermore, while the programs view these plans as "tentative" projections, PCMD often views them as commitments against which program performance is to be measured.

Following a comprehensive review of the current Contract Planning System, the steering group found that the budget process and other uncertainties hamper detailed contract planning; late submission of contract plans forces PCMD to use operating plans and historical experience to anticipate workloads; an uneven work load for PCMD is created by a concentration of submissions in April seeking to comply with the 85-percent requirement; and there is a bias in the system against planning purposes procurement requests. Timely communication between PCMD and the programs is essential, but the present system's emphasis on formal reports may be unduly rigid and dysfunctional.

After a number of steering group meetings and several brainstorming sessions organized by PCMD, the parameters for an improved Contract Planning System have been established. A consensus was developed for a general annual plan, with specifics provided by means of more detailed quarterly plan submissions and an increased reliance or less formal communications between PCMD and the programs.

The steering group concurred in a new system with the following major components:

- Initiation of planning process in July/August to take advantage of a 15-month planning cycle.
- Initial meeting between senior PCMD and program management focused on broad topics.
- A simplified general annual plan.
- Detailed quarterly plans.
- Monthly/quarterly meetings between PCMD and program staff to discuss specifics and revisions.
- Increased use of planning purpose procurement requests.

POLICIES, PROCEDURES, AND REPORTING

For this module the steering group examined EPA's procurement, policies, procedures, management reporting, organization, and human resources. In our opinion, the group's concerns with EPA's contract information system were of interest.

In reviewing EPA's procurement-reporting system, the group found several problems. EPA maintains a Contract Information System to provide information to program offices on the status of their contracts. According to the steering group, there was concern within EPA that the information contained in the system was frequently inaccurate. In addition, two-thirds of all program offices indicated that the reports produced by the system were not used at all or had only minimal value. The major problems with the system, according to its users, were inaccurate information and delays in receiving reports.

The following improvements specifically approved by the Assistant Administrator for Administration and already adopted or currently under implementation are to

- establish an improved mechanism for dissemination of procurement policy, procedures, and information to users;
- evaluate means for improving communications with regional contracting officers; and
- develop more meaningful Contracts Information System reports for use by program personnel.

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