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BY THE U.S. GENERAL ACCOUNTING OFFICE

Report To The Honorable Max Baucus United States Senate

Justice Can Improve Its Contract Review Committee's Contribution To Better Contracting

GAO evaluated how successful the Department of Justice's contract review committee had been in performing its duties. Justice established the committee in 1981 to ensure compliance with procurement statutes, regulations, policies, and procedures through preaward reviews of contracts over $100,000, sole-source contracts over $50,000, and potentially controversial contracts.

Committee reviews have improved Justice contracts and contracting practices. However, further improvements are needed to improve contracting activities because

--deficiencies in contracts continue to occur, and

--not all required contracts are submitted for committee review.

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SEPTEMBER 28, 1984

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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

GENERAL GOVERNMENT
DIVISION

B-202816

The Honorable Max Baucus
United States Senate

Dear Senator Baucus:

This report responds to your June 17, 1983, and February 3, 1984, requests to evaluate how successful the Department of Justice's contract review committee had been in performing its duties and to trace the history of a specific Justice contract. The report addresses the need for the Justice Department to take several actions to increase the effectiveness of the contract review committee's contribution to improving Justice's contracting activities.

We trust the information provided will be useful to your continuing oversight efforts. As agreed with your office, unless you publicly announce the contents of the report earlier, we plan no further distribution until 30 days from the date of this report. At that time we will send copies to the Attorney General, the Director of the Office of Management and Budget, congressional committees having a jurisdictional interest in Justice's procurement activities, and other interested parties. Additionally, we will make copies available to others upon request.

Sincerely yours,

W. J. Anderson

William J. Anderson
Director

GENERAL ACCOUNTING OFFICE
REPORT TO SENATOR MAX BAUCUS

JUSTICE CAN IMPROVE ITS CONTRACT REVIEW COMMITTEE'S CONTRIBUTION TO BETTER CONTRACTING

D I G E S T

In 1981, the Department of Justice established a contract review committee to ensure compliance with procurement statutes, regulations, policies, and procedures. The committee was given responsibility for performing preaward reviews of (1) Justice contracts over $100,000, (2) contracts over $50,000 to be awarded without competition, and (3) other unusual or difficult and potentially controversial contracts. (See pp. 2 to 4.)

Senator Max Baucus asked GAO to analyze how successful the committee had been in performing its duties. GAO's review focused specifically on ascertaining (1) whether the committee had improved Justice's contracts and contracting practices, (2) whether all contracts that were required to be submitted to the committee actually were submitted, and (3) whether Justice's procuring organizations followed the committee's recommendations. GAO did not obtain agency comments on this report; however, the facts were discussed with agency officials and they agreed with the facts presented. (See pp. 5 and 8.)

COMMITTEE REVIEWS HAVE IMPROVED JUSTICE CONTRACTS AND CONTRACTING PRACTICES

Justice contracting officials told GAO that the contract review committee has improved Justice contracts it has reviewed and has improved Justice contracting practices. Improvements cited included more care taken in

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preparing contracts, improved compliance with Federal Procurement Regulations, and more attention to documentation in contract files.

One measure of the improvement in Justice contracts was the number of contracts that would have been awarded even though they or their supporting files contained deficiencies deemed by the committee serious enough to make the contract legally insufficient for award. GAO's review showed that the committee found such deficiencies in 162 (53 percent) of the 307 contracts it reviewed during fiscal year 1983. GAO found that 93 percent of the committee-identified deficiencies it reviewed in these contracts were subsequently addressed by the procuring organization. For example, the committee found a clause in one contract that could have caused the available appropriation to be exceeded. As a result of the committee's finding, the procuring organization revised the clause to remedy the deficiency.

In addition, internal Justice evaluations of the committee's role in the procurement process stated that the committee has improved Justice contracting practices. They observed that the committee provided a strong internal control over contracting activities and that 86 percent of the 28 respondents to a Justice questionnaire noted that ensuring compliance with statutory and regulatory requirements was an important benefit of the committee. (See pp. 9 to 12.)

JUSTICE'S CONTRACTING PRACTICES NEED FURTHER IMPROVEMENT

Committee continues to find contract deficiencies

The committee's rejection of about 53 percent of the fiscal year 1983 contracts it reviewed showed that despite the committee's efforts

since its establishment in 1981, problems exist with Justice's contracting practices. For example, the committee noted that $145,000 was paid out over an extended period of time without the benefit of a contract, which violated Federal Procurement Regulations.

For contracts that the committee rejected with deficiencies in the 20 categories GAO examined, the committee identified 322 deficiencies in 146 contracts rejected in fiscal year 1983, compared to 294 deficiencies in 111 contracts rejected in fiscal year 1982.[1] Specific deficiencies identified by the committee in fiscal year 1983 were also cited by the committee in fiscal year 1982, although not necessarily in contracts from the same procuring organization. (See pp. 13 to 16.)

Not all required contracts are submitted to the committee

About 89 percent (286) of the contracts that should have been submitted to the committee for review before award in fiscal year 1983 were submitted. However, in 1983 Justice awarded 34 contracts valued at about $10.5 million without the committee's required preaward review and approval. The committee subsequently reviewed 21 of these contracts and determined that 14 of them had been legally insufficient for award. Reasons given to GAO by contracting officials for nonsubmission ranged from improperly interpreting committee review procedures to mistakenly thinking that certain procurement actions, such as letter contracts, did not require committee review.

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[1]The committee classifies the deficiencies it finds into 54 different categories. With the assistance of GAO and Justice procurement specialists, GAO selected for analysis 20 categories that were among the most important in determining the legal sufficiency of contracts.

An official in one Justice procuring organization--the National Institute of Corrections--told GAO he was not aware of the committee's existence. Therefore, from the committee's inception through fiscal year 1983, the Institute awarded 14 contracts worth about $6.6 million without the required committee review. (See pp. 16 to 18.)

MOST COMMITTEE RECOMMENDATIONS ARE FOLLOWED

In fiscal year 1983 the committee rejected 62 contracts containing deficiencies in GAO's selected categories as being legally insufficient for award but not warranting a further committee review because the deficiencies were straightforward and easily fixable. Of these 62 contracts, 49, or 79 percent, were satisfactorily handled. Eleven of the 13 other contracts, worth about $2.9 million, contained committee recommendations that the procuring organizations did not address and that, in the opinions of committee staff, would have caused the contract to remain legally insufficient for award. The committee's recommendations should have been resolved before the contracts were awarded but were not for various reasons, including the disagreement of procuring organizations. GAO's review of the recommendations not addressed presented a mixed picture. Although GAO did not always agree with the committee's conclusions or believe a significant risk resulted from not acting on them, the committee did correctly identify areas where improvements could be made. (See pp. 18 and 19.)

JUSTICE ACTIONS TO IMPROVE ITS PROCUREMENT PRACTICES

In November 1983 Justice internal auditors expressed concern about weaknesses in Justice's procurement policies and procurement oversight, including the absence of periodic

procurement inspections and a contracting officer career management program, including training.[2] Because these shortcomings have been cited as causes underlying the committee's continuing findings of contract deficiencies, GAO believes that these findings should be used when Justice develops strategies for procurement improvement. For example, the findings should be used when Justice decides what procurement activities to inspect and what specifically to examine within those activities.

In May 1984 Justice's procurement executive distributed a document to Justice procuring organizations summarizing and analyzing committee findings and stating that guidance aimed at preventing recurrences of faulty practices in the future would be issued.[3] GAO believes these are steps in the right direction because they pinpoint recurring deficiencies. Making periodic oral presentations to contracting officials of serious and recurring findings would enhance Justice's planned efforts. This would supplement written guidance and provide a forum for questions and answers on how to improve contracting activities. (See pp. 20 to 21.)

CONCERN OF CONTRACTING OFFICIALS WITH COMMITTEE OPERATIONS

GAO discussed fiscal year 1983 deficiencies identified by the committee with the 42 available officials responsible for the contracts

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[2]U.S. Department of Justice, Justice Management Division, Audit Staff, Procurement System in the Department of Justice, November 1983.

[3]The procurement executive is responsible for directing Justice's procurement system and implementing its policies, regulations, and standards.

GAO reviewed. Of the 273 deficiencies identified by the committee in these contracts and within GAO's 20 selected categories, the contracting officials agreed with the committee on about 61 percent, disagreed on about 29 percent, and were undecided on the remaining 10 percent. Their disagreements and concerns resulted from such beliefs as the committee misses items in contract files, exceeds its authority, and intrudes on the authority of contracting officers.

A May 1984 internal Justice management report also found concern among contracting officials with the committee's operations.[4] For instance, 39 percent, or 9 of 23 respondents to one question asked by the Justice study team, disagreed with the committee's determinations more than 75 percent of the time on those contracts of theirs found legally insufficient for award. In contrast, the other 61 percent, or 14 of 23 respondents to the question, agreed with committee findings anywhere from about 50 percent of the time to all of the time. The report found that 75 percent of the respondents to another question believed that the major detriment to the committee review process was the reduction in contracting officers' authority without a corresponding reduction in their responsibility.

To address the concerns identified, the Justice report made many recommendations. One recommendation was to move the contract review function from its location where it is independent of other procurement officials, place it under the procurement executive, and have the procurement executive report directly to the Deputy Assistant Attorney General for Administration. The Justice report noted that

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[4]U.S. Department of Justice, Justice Management Division, Office of the Controller, Review of the Contract Review Committee's Role in the Procurement Process, May 1984.

this arrangement would be consistent with the procurement executive concept, providing agencywide, as opposed to disjointed, authority and responsibility for procurement activities.

The procurement executive currently reports to a level below the Deputy Assistant Attorney General for Administration. If he were given the contract review function but maintained his current reporting relationship, he would not be at an organizational level above the head of the procurement operations whose contracts he would be required to review. Therefore, GAO believes the recommendation made in the internal Justice report as to the organizational placement of the procurement executive along with the contract review function responsibility is a reasonable approach. (See pp. 21 to 24.)

RECOMMENDATIONS TO THE ATTORNEY GENERAL

GAO recommends that the Attorney General

--direct the committee to make periodic oral presentations of its findings to contracting officials.

--clarify Justice's policy to delineate the types of contracts that should be submitted to the committee so as to ensure that the committee receives all contracts it should review. These types of contracts should include letter contracts; purchases of various specific services, such as expert witnesses; exercise of options; and contracts with indefinite dollar amounts estimated to be above the committee's threshold.

--direct the procurement executive to use committee findings when developing strategies for carrying out procurement inspections and other oversight functions, such as deciding

who and what to inspect; and for establishing the training component of, and training materials for, a career management program.

In addition, if the contract review functions are given to the procurement executive, GAO recommends that the Attorney General have this official report to a level no lower than the Deputy Assistant Attorney General for Administration. (See p. 25.)

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ABBREVIATIONS

CRC	Contract Review Committee
FBI	Federal Bureau of Investigation
GAO	General Accounting Office
PROMIS	Prosecutor's Management Information System
U.S.C.	United States Code

CHAPTER 1

INTRODUCTION

This report responds to two requests from Senator Max Baucus, Ranking Minority Member, Subcommittee on Separation of Powers, Committee on the Judiciary. The first request asked us to evaluate how successful the Department of Justice's contract review committee (CRC) had been in performing its duties.[1] The CRC reviews major Justice contracts before they are awarded. In a subsequent request, the Senator asked us to trace the history of a specific Justice contract.

SIZE AND DECENTRALIZATION OF JUSTICE'S PROCUREMENT ACTIVITIES

Justice estimates that it obligated about $498 million for goods and services in fiscal year 1983.[2] These procurements ranged from radio voice privacy equipment to litigation support services to safekeeping, care, and halfway house services for federal prisoners.

Justice's procurement activities are decentralized and dispersed through various procuring organizations. The following paragraphs briefly describe how Justice procurement activities were managed within Justice during our review, and appendix I presents a chart of procuring organizations.

By law (41 U.S.C. 414), the head of each federal executive agency must designate a procurement executive responsible for directing the agency's procurement system and implementing its unique policies, regulations, and standards. The procurement executive in Justice is responsible for these functions and for

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[1]We previously reported on Justice's procurement practices in a report to Senator Max Baucus entitled Use of Consultants by the Department of Justice (GGD-81-55, April 17, 1981). In that report we noted weaknesses in Justice's contracting for consultants but expressed the belief that Justice's then recently established CRC was a step toward improving its procurement practices.

[2]A Justice Finance Staff official told us that Justice could not provide the dollar amount actually spent on procurement in fiscal year 1983.

the Procurement and Contracts Staff, which operationally supports Justice's offices, boards, and divisions and provides departmental policy guidance for all procuring organizations. Justice has analyzed this dual role and has been studying ways of revamping its procurement organization to separate the two responsibilities.

At the bureau level, two Justice bureaus contract for items through both Washington and regional offices. The Immigration and Naturalization Service, which administers immigration and naturalization laws, contracts for its goods and services through a central office and four regional offices. In the Bureau of Prisons, which maintains a nationwide system of federal penal institutions, a central office sets procurement policy, but five regional offices and over 40 institutions do most of the procurement. In addition, the Bureau contains a separate federal agency--the National Institute of Corrections--that helps federal, state, and local correctional officials develop and implement improved corrections programs. The Institute has the authority to enter into its own contracts.

Another Justice bureau, the United States Marshals Service, whose duties include safeguarding protected witnesses, providing physical security for U.S. courtrooms, and performing federal law enforcement functions for the Attorney General, also has more than one procurement group.

Three Justice bureaus each have a central office charged with performing all their contracting. These are the Drug Enforcement Administration, which enforces narcotics and controlled substances laws and regulations; the Office of Justice Assistance, Research, and Statistics, which coordinates the federal approach to criminal justice assistance, research, and statistics; and the Federal Bureau of Investigation (FBI), which is Justice's principal investigative agency.

THE CRC'S HISTORY, ROLE, AND OPERATIONS

A Justice-wide CRC was established in January 1981 to oversee Justice's decentralized operations in response to concerns voiced within Justice, Congress, and elsewhere. Because Justice is the Nation's leading law enforcement agency, the Attorney General believed that full Justice compliance with appropriate procurement procedures was imperative. The House Committee on Government Operations stated (House Report 96-1459, p. 79) that the Immigration and Naturalization Service's

contracting practices were "deplorable" and Justice "was remiss in its oversight." Also, several FBI procurements had been questioned. Justice believed that a CRC would considerably reduce future criticisms and substantially improve the quality of procurement practices. In fiscal year 1983 Justice spent about $180,000 for CRC operations.

According to Attorney General Order 929-81, as revised on February 20, 1982, the CRC was to review contracts before they were awarded to ensure compliance with procurement statutes and regulations and Justice's procurement policies and procedures. During our review the governing regulations were the Federal Procurement Regulations, which were issued governmentwide and provided basic procurement guidance for civilian executive agencies. Effective April 1, 1984, the Federal Acquisition Regulation replaced all civilian, military, and National Aeronautics and Space Administration acquisition regulations. Justice's own procurement regulations supplemented the federal regulations.

The CRC, composed of five high-level Justice officials, was charged with ensuring that the awards it reviewed were procedurally and legally sufficient. The CRC executive secretary told us that a "legally sufficient" contract is one that minimizes the possibility of financial loss or embarrassment to Justice if the contract is challenged in court or administrative proceedings. The CRC was not charged with reviewing the need for contract services.

The CRC is required to review

--proposed contracts exceeding $100,000 and all proposed modifications or amendments to existing formal contracts that cause the total contract costs to exceed $100,000 (substitute $50,000 for proposed noncompetitive sole-source contracts),

--other unusual or difficult proposed contracts that are potentially controversial as identified by a Justice procuring organization or by the CRC on the basis of information coming to the CRC's attention, and

--all contracts after they are awarded if the preaward requirements had been waived or violated (that is, if a procuring organization did not obtain a preaward CRC review).

The contract review process involves the following steps. First, each proposed contract is to be reviewed and approved within each procuring organization. Second, the CRC staff performs a preliminary analysis of the proposed contract. Third, the CRC meets at least weekly to consider the preliminary analyses made and vote on the action to be taken regarding the contract or contracts. Fourth, the CRC then advises the procuring organization of the results of its action and all contracts identified as procedurally or legally insufficient must be corrected before award, according to the CRC's executive secretary. If the procuring organization disagrees with the CRC's ruling on a contract, it may appeal to either the Deputy or the Associate Attorney General as appropriate.

The CRC does not review the contracts of the FBI or the Federal Prison Industries, Inc. The reasons for the FBI's exemption are discussed in the following section. The CRC executive secretary told us that the Federal Prison Industries is exempt because it is a government corporation associated with the Bureau of Prisons and subject to different procurement guidance. For certain procurements it must follow Federal Procurement Regulations "only to the maximum practical extent." The total procurement obligations of Justice exclusive of these two procuring organizations amounted to $295 million in fiscal year 1983.

During fiscal year 1983, the CRC reported that it reviewed contracts valued at about $148 million. This number and the $295 million are not comparable because they reflect contractual work stretching over different periods and long-term estimates versus short-term obligations. In addition, the proportion of Justice procurement dollars reviewed by the CRC is reduced because a large number of small purchases are made by Justice outside the CRC's jurisdiction. Also, the CRC executive secretary told us the proportion is reduced because many items are bought through CRC-exempt arrangements with the General Services Administration.

EXEMPTION OF THE FBI FROM CRC JURISDICTION

Although questioned FBI procurements had been cited by Justice as a reason contributing to the establishment of the CRC, the FBI in 1980 requested that it be exempt from CRC oversight. The FBI based its request on the grounds that it had recently established its own contract review board and that certain highly sensitive classified information should not be subject to CRC review. In considering the FBI's request, Justice weighed

four options: (1) treating the FBI like other Justice organizations, (2) exempting the FBI from CRC jurisdiction altogether, (3) requiring the FBI to provide summaries of its board's reviews to the CRC for concurrence, and (4) requiring the FBI to submit to the CRC only those contract proposals not involving highly sensitive information or operations. The second option--exempting the FBI completely--was the option chosen.

The FBI's contract review board has a mandate different from Justice's CRC mandate. First, the dollar thresholds are different. The FBI board reviews all proposed procurements of $250,000 or more; all noncompetitive, restricted competitive, or research and development procurements of $100,000 or more; and all covert or extraordinary contractual actions over $100,000 and selected contracts under $100,000 after approval by the contracting officer. Second, the board's function is different. Its role is to assess whether a need exists for a contract and to examine the proposed contracting procedures, including the negotiation authority, justification of contract type, and justification for whether or not to publish the procurement action. This latter role includes considering legal issues.

In fiscal year 1983 the FBI's contract review board reviewed 52 proposed contractual actions amounting to almost $132 million. Five of the 52 contract actions, or about 10 percent, were denied, and 4 of these were approved after a second review.

OBJECTIVES, SCOPE, AND METHODOLOGY

On June 17, 1983, Senator Max Baucus asked us to evaluate how successful the CRC had been in performing its duties. As agreed with the requestor's office, we did not evaluate the overall quality of Justice's procurement activities. We limited our review to determining

--whether the CRC had improved Justice's contracts and contracting practices,

--whether all contracts that were required to be submitted to the CRC actually were submitted,[3] and

--whether Justice procuring organizations followed the CRC's recommendations.

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[3]The term "contracts" refers to new contracts and modifications to existing contracts.

To address our objectives, we focused on the contracts that were eligible for CRC review, that is, we concentrated on contracts in excess of $100,000 or in excess of $50,000 when the contract was to be awarded without competition. We restricted our detailed data collection to Justice procuring organizations under the CRC's jurisdiction and did not include the procurement activities of the FBI or the Federal Prison Industries.

The CRC classified the deficiencies it found in contracts into 54 different categories. Because of the large number of deficiencies in contracts found by the CRC and because of the time constraints placed on our review by the requestor, we asked procurement specialists in GAO and Justice which of the 54 categories were the most important in determining the legal sufficiency of contracts. On the basis of discussions with these individuals and our preliminary audit work at Justice, we focused on 20 deficiency categories relating mainly to securing competition and reasonable prices. These categories are listed and defined in detail in appendix II.

To determine whether the CRC's findings in these 20 categories helped improve procurement at Justice, we studied the fiscal year 1983 findings in contracts that the CRC identified as being "not legally sufficient" for award, that is deficiencies that could cause financial loss or embarrassment to Justice. Of the 307 contracts the CRC reviewed in 1983, it found that slightly more than half, or 162, were not legally sufficient. Of these 162 contracts, we found that about 90 percent, or 146, contained a weakness in at least 1 of our 20 major deficiency categories. These 146 contracts, totaling about $63 million of the $148 million of contracts the CRC reviewed in 1983, are the contracts we analyzed in detail. We did not examine the 145 contracts that the CRC did not officially reject the first time it reviewed them or the 16 contracts it rejected for deficiencies not included in our 20 categories of major deficiencies. For each of the contracts we reviewed, we documented from CRC files the deficiencies found in our 20 categories and asked the available involved contracting officials, 42 in total, if they agreed with the CRC determinations.[4]

We performed two tests to ascertain if all contracts that should have been submitted to the CRC actually were submitted.

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[4]If the CRC had not already categorized particular deficiencies, we categorized them ourselves on the basis of earlier CRC classifications and reviewed them for internal consistency.

First, we searched CRC files for evidence of contracts that the CRC found only after the contracts had been awarded. Second, we compared lists of contracts the CRC reviewed with other contract lists provided to us by the Justice procuring organizations we reviewed.

For each contract reviewed, we verified whether CRC recommendations, implied or otherwise, in our 20 deficiency categories were followed, but only for the 62 contracts (out of the original 146) that the CRC neither approved nor required to be resubmitted before award. (For the contracts requiring resubmission, the CRC determined on its own if its concerns had been met.) For the 11 contracts that were awarded without the recommended changes and, according to CRC staff, would still have been legally insufficient, our procurement attorneys evaluated, among other things, the risk Justice took by not making the changes suggested by the CRC.

We obtained additional information about the CRC's impact and effectiveness in several other ways. We reviewed Justice documents relating to Justice's procurement activities, including audit and management reports that discussed the role and activities of the CRC. Also, we interviewed the chiefs of all major Justice procuring organizations, members of the CRC itself, and other Justice officials involved with contracting. We asked specifically about changes in procurement practices throughout Justice that may have resulted from CRC findings and about the status of Justice-wide procurement management. In addition, we compared the CRC's fiscal year 1983 findings in our 20 selected categories to the 1982 findings categorized by the CRC to ascertain what similarities or differences may have existed over time.

On February 3, 1984, Senator Max Baucus requested that we trace the history of a specific Justice contract. This contract had been awarded to INSLAW, Inc. in the amount of $9.9 million, including a modification awarded the same day, to implement a caseload management system (referred to as the Prosecutor's Management Information System) in U.S. attorneys' offices. To accomplish this request, we interviewed Justice and contractor officials and examined various procurement files related to this and predecessor contracts. The results of our work are detailed in appendix III.

At the request of the Senator's office, we did not obtain agency comments on this report. We did, however, discuss the facts presented in the report with Justice and INSLAW, Inc.

officials. These officials agreed with the facts presented. Except for not obtaining agency comments, our work was performed in accordance with generally accepted government auditing standards. We performed our audit work between August 1983 and August 1984.

CHAPTER 2

JUSTICE SHOULD IMPROVE CERTAIN PRACTICES RELATED TO CONTRACT REVIEW COMMITTEE ACTIVITIES

The CRC has improved Justice contracts through preaward reviews, which identified contract deficiencies, and follow-up reviews, which ensured that procuring organizations corrected those deficiencies before contracts were awarded. The CRC's efforts have also improved contracting practices of the Justice Department. However, Justice's contracting practices need further improvement. The CRC finds serious and recurring deficiencies in contracts and contract files. In addition, Justice needs to ensure that all required contracts are sent to the CRC for preaward review. On the other hand, most CRC recommendations are addressed by the various Justice procuring organizations. Justice recently began analyzing the deficiencies the CRC identified in contracts and taking actions to remedy the policy, oversight, and training deficiencies underlying them. These efforts should be supplemented by periodic CRC oral presentations of its findings to contracting officials and by the use of CRC findings in the development of overall strategies for improving procurement. The CRC itself has plans to try to improve communications with contracting officials, many of whom have voiced concern with CRC operations.

CRC REVIEWS HAVE IMPROVED JUSTICE CONTRACTS AND CONTRACTING PRACTICES

The CRC has improved the Justice contracts it has reviewed. In fiscal year 1983 the CRC formally rejected about 53 percent, or 162, of the 307 contracts it reviewed as legally insufficient for award. These rejected contracts had 322 deficiencies that fell into the 20 selected deficiency categories we reviewed. As of April 26, 1984, we found that 93 percent of the 322 deficiencies identified either had been changed by the procuring organizations' to the CRC's satisfaction, resulting in CRC approval of contracts, or, where resubmission to the CRC was not required, the CRC concerns had been addressed by these organizations. Although contracting officials did not always agree with CRC findings, they believed that the CRC often

identified deficiencies needing improvement. A May 1984 internal management report, prepared by the evaluation staff within the Office of the Controller, described CRC accomplishments and came to similar conclusions.[1]

We asked 42 Justice contracting officials whether they agreed or disagreed with CRC findings on their contracts. They told us that they agreed with the CRC on about 61 percent of its findings on their contracts. Of the 273 deficiencies for which we obtained contracting officials' opinions, the officials told us they agreed with the CRC on 167.[2] The following are examples of CRC findings agreed to by contracting officials we interviewed and addressed to the CRC's satisfaction:

--The fairness and reasonableness of a contract price was not adequately documented.

--A statement of determinations and findings did not present sufficient facts to support a conclusion to negotiate on a sole-source basis, that is without obtaining competition.

--The provisions of a particular contract section were too indefinite to be considered an option. The price was subject to further negotiations, even though an option generally should not require further negotiations and should be a unilateral right resting with the government and not requiring contractor approval.

--Questions concerning product delivery, the number of manuals to be provided, and the meaning of prompt payment terms were not resolved during the negotiation process. They should not be left for later agreement during price revision or other supplemental proceedings.

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[1]U.S. Department of Justice, Justice Management Division, Office of the Controller, Review of the Contract Review Committee's Role in the Procurement Process, May 1984.

[2]We obtained views on only 273 deficiencies, versus the total 322 we examined, because a contracting official responsible for certain contracts no longer worked for Justice and certain deficiencies appeared twice in particular contract files on two successive CRC reviews of the same contract.

--A particular contract clause could have subjected the government to an indeterminate contingent liability that could have exceeded the available appropriation.

On the basis of discussions with Justice's procurement executive and Justice contracting officials, including heads of procurement staffs in the six Justice procuring organizations we studied, and our review of the May 1984 internal management report and a November 1983 internal audit report,[3] we concluded that the CRC's activities have also improved Justice contracting practices. Improvements cited by Justice officials include

--more care taken by contracting officials in preparing contracts,

--more support for contracting officials to use when discussing with program officials why contracts or contracting procedures had to be handled in a certain manner,

--an expanded knowledge of contracting procedures on the part of contracting officials,

--more assurance that Justice is less vulnerable to embarrassment and successful challenges by interested parties,

--more consistency of procurement practices among contracting officials,

--improved compliance with Federal Procurement Regulations, and

--more attention to documentation in contract files.

The November 1983 internal audit report observed that the CRC provided a strong internal control over contracting activities. The May 1984 Justice internal management report concluded that the CRC had improved Justice procurement activities. Eighty-six percent of the 28 contracting officials responding to a Justice questionnaire noted that ensuring compliance with statutory and

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[3]U.S. Department of Justice, Justice Management Division, Audit Staff, Procurement System in the Department of Justice, November 1983.

regulatory requirements was an important benefit of the CRC.[4] Because the CRC eventually approved almost all the fiscal year 1982 contracts it initially rejected and asked to be resubmitted, the report concluded that those contracts had in fact been improved. Furthermore, according to the evaluation staff, about 61 percent, or 14 of the 23 respondents to one question, said they agreed about 50 percent of the time to all of the time with CRC findings on contracts found legally insufficient for award. The report concluded that a Justice-level review of the contracting process was still necessary to continue improving Justice contracts.

An example of a change in contracting practices caused by the CRC dealt with the Bureau of Prisons' certificate of current cost or pricing data. This certificate is used by a contractor to certify that submitted cost and pricing information is accurate, complete, and current. On the basis of CRC statements in May, June, and July 1981 that Bureau certificates did not conform to regulatory requirements, the Bureau replaced an old certification form it was using with the one specified in the Federal Procurement Regulations.

JUSTICE'S CONTRACTING PRACTICES NEED FURTHER IMPROVEMENT

Despite the improvements resulting from CRC activities, Justice contracting practices still need improvement. We found that

--the CRC continued to find deficiencies in contracts submitted for its review; and

--procuring organizations submitted most, but not all, of their required contracts to the CRC.

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[4]Out of 60 questionnaires the evaluation staff sent out, it received responses on 44, or about 73 percent. However, out of the 44, only 28 respondents had submitted at least one contract for CRC review. The Justice report's statistics were based on the responses of the 28 respondents to the questionnaire. On some questions, fewer than 28 responses were received.

The CRC continued to find deficiencies in contracts

The CRC found a number of deficiencies in contracts it reviewed in fiscal year 1983. For contracts that the CRC rejected with deficiencies in the 20 categories we examined, the CRC identified 322 deficiencies in 146 rejected fiscal year 1983 contracts, compared to 294 in 111 rejected 1982 contracts. Within the 20 categories, the CRC found deficiencies of varying severity. The following paragraphs discuss some of the more severe deficiencies in particular categories.

In one case, Justice's Procurement and Contracts staff used six different precontract cost authorizations over 8 months before submitting a proposed contract to the CRC for review. The CRC ruled that the authorizations constituted "a flagrant disregard" for the Federal Procurement Regulations. It also concluded that about $145,000 had been paid to the proposed contractor without the benefit of an existing contract. The contracting officer replied that no disregard of regulations was intended and that workload factors were responsible for not completing the contract in a more timely fashion. Payments were made so work would continue on an extremely sensitive and important project. The CRC finding prompted the director of the Procurement and Contracts Staff to emphasize to his employees that payments may not be made to a contractor in the absence of a contract. The CRC referred this case to Justice's Office of Professional Responsibility, which concluded that proper procedures were not followed but found no evidence of criminal activity.[5]

In another case, the CRC found that the Immigration and Naturalization Service had improperly executed a $1.4 million contract option that had already lapsed. Because of the CRC's findings, Immigration decided to use a new contract. However, the new contract had to be awarded sole source until a competitive award could replace it because any interruption in the services already being provided was considered unacceptable.

In a third case, the CRC found that the Bureau of Prisons used a letter contract--an interim type of contractual agreement--to authorize a contractor to begin manufacturing supplies or performing services. Because contract requirements had

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[5]The Office of Professional Responsibility investigates allegations of employee misconduct.

already been negotiated and the price had already been determined fair and reasonable, the CRC stated that using a letter contract in this situation was inappropriate. Furthermore, it noted, the protections normally provided the government were weakened. The contract specialist told the CRC that all precautions would be taken to prevent a recurrence of this situation.

In a fourth case, the CRC cited 13 deficiencies, including 6 in our 20 selected categories, in rejecting another Bureau contract it reviewed in fiscal year 1983. Among the deficiencies noted were providing unclear criteria for evaluating contract proposals and neglecting to include (1) all needed determinations and findings statements, (2) a properly prepared analysis of contractor costs, and (3) documentation supporting a decision on whether a change in specifications required reopening competition for the contract. The contracting official responsible for this contract told us that she agreed with four of the six deficiencies in our 20 categories, was undecided on another one, and disagreed with the sixth.

In another contract, the CRC concluded that the requirement to obtain competition to the maximum practical extent may not have been met. In this case the Bureau of Prisons asked for proposals from only two of the three companies capable of providing certain services in an area. In addition, it did not address the issue of whether changes in the government's requirements required the Bureau to cancel the solicitation for a contract and resolicit. After the CRC's review the Bureau did resolicit. A new contract was approved by the CRC in May 1984.

In addition to studying CRC findings for fiscal year 1983, we compared findings in 1982 and 1983. We found a number of recurring problems, although they did not necessarily occur in the same procuring organization in both years. One example of a problem that was still occurring involves procuring organizations not obtaining a review above the level of the contracting officer when negotiating a noncompetitive procurement, as required by the Federal Procurement Regulations, section 1-3.101 (d). In fiscal year 1982 the CRC identified 14 instances of such reviews missing in the contracts it rejected, whereas in fiscal year 1983 it identified 6 instances. One Justice procuring organization accounted for 5 of the 14 instances in 1982 but none of the 6 in 1983.

In both fiscal years 1982 and 1983, the CRC questioned whether the dates on certificates of current cost and pricing

data were in fact the dates when price negotiations were concluded and the contract price was agreed to, as required by Federal Procurement Regulation 1-3.807-4. A CRC official told us that if the certificate was dated too early, the government might have had trouble obtaining a price reduction if costs later turned out to have been misrepresented. The CRC identified 10 instances of improper dates in rejected contracts in fiscal year 1982 and 9 in fiscal year 1983.

By law (31 U.S.C. 1341), before a contract can be awarded, the procuring organization must determine that sufficient funds are available. Otherwise, there is no assurance Justice actually has the appropriated money to spend. For five rejected contracts in fiscal year 1982 and six in fiscal year 1983, the CRC could not locate a certification in the contract files it reviewed that showed without qualification that money was available. Similarly, in another five contracts in 1982 and six in 1983, the CRC noted that funds had been certified available, but not for the total contract amount.

Another example of a recurring CRC finding dealt with statements of determinations and findings. These are documents required by the Federal Procurement Regulations justifying such matters as not using formal advertising. According to the CRC executive secretary, their use is designed to prevent the circumvention of the competitive procurement process. Although what is adequate support in or behind a statement of determinations and findings may be a matter of judgment, the CRC questioned the statements' support in 17 rejected instances in fiscal year 1982 and 15 in fiscal year 1983.

Justice's May 1984 internal management report also discussed the repetitiveness of problems within CRC deficiency categories. Justice evaluators questioned whether information on repeated problems was being circulated within the various procurement offices. At the beginning of our review, we also found limited circulation and summarization of CRC findings, a situation that Justice was remedying so repeated deficiencies could be pinpointed. As will be described more fully on page 20, in May 1984 the procurement executive formulated his first periodic internal document summarizing and analyzing the CRC's most frequent comments. That document identified six areas in which the number of CRC comments was significant. The procurement executive planned next to issue recommendations and instructions to prevent those findings in the future. We believe that when serious or recurring findings such as the ones we have described occur, they should also be highlighted in

periodic verbal presentations made to contracting officials. In our opinion, these presentations would further emphasize the repetitiveness of certain deficiencies and help prevent their occurrence in the future.

Justice procuring organizations submitted most, but not all, of their large contracts to the CRC

If Justice's contract review policies were being properly followed, for fiscal year 1983 the CRC would have reviewed 320 contracts. Of this number, the CRC reviewed 286, or about 89 percent, at the appropriate time. However, Justice awarded 34 contracts, or about 11 percent, without obtaining the CRC's required preaward review and approval.[6] These contracts were valued at about $10.5 million and ranged from about $2,000 to almost $1.4 million. (The $2,000 was a contract modification that brought the total contract cost above the $100,000 CRC review threshold.) The CRC reviewed 21 of these contracts after they were awarded and concluded that 14 of them had been legally insufficient for award. According to the CRC executive secretary, 10 of the other 13 contracts not submitted to the CRC were not requested by the CRC for postaward review because the CRC staff did not have specifics about them. We identified the other three contracts not submitted for prior approval and provided information on them to CRC staff in May 1984. According to the CRC executive secretary, as of August 10, 1984, the CRC had requested but not yet received the files for these contracts. He added that CRC review of these contracts was no longer relevant since the contracts had all expired.

Contracting officials gave us many reasons for nonsubmission. A National Institute of Corrections official told us he did not submit seven 1983 contracts worth over $3 million because he was not aware of the CRC's existence or of the oversight role of the Procurement and Contracts Staff. From the CRC's inception through fiscal year 1983, the Institute awarded 14 contracts worth about $6.6 million that were never reviewed by the CRC although they should have been.

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[6]Another 10 contracts were awarded in fiscal year 1982 without CRC review. These were to become effective in fiscal year 1983.

Another category of contracts that were not submitted to the CRC involved expert witnesses. Justice uses expert witnesses to lend credible support to its positions in litigation. In fiscal year 1983, Justice awarded three expert witness contracts, worth almost $610,000, that were over $100,000 each. The Procurement and Contracts Staff official who processed these contracts told us she was unaware of CRC submission requirements.

Certain medical and hospital service contracts were issued by the Bureau of Prisons without prior CRC review. A Bureau contracting officer told us the reason for this was that he mistakenly believed these contracts were exempt from review because they were sole source and highly specialized. In fiscal year 1983, one Bureau facility had eight contracts like this, each for more than $50,000, worth a total of $910,000. When the CRC reviewed one of the contracts after it was awarded, it stated that "none of the required regulatory procedures as cited in title 41 of the Code of Federal Regulations [containing Federal Procurement Regulations] have been observed in the conduct of this procurement." Among the sections specifically cited was Federal Procurement Regulation 1-3 dealing with the conduct of negotiations and price and cost analysis. On the basis of its findings, the CRC expressed its opinion that the contract was void. As will be described more fully on pages 18 and 19, this contract was 1 of 11 contracts our attorneys examined. On the basis of their examination of the records we were given by the Bureau and the 20 deficiency categories we selected, our attorneys generally agreed with the CRC that the contracting officer should have tried to the degree possible to follow required negotiation procedures. However, they also noted the deficiencies were matters of form rather than substance. In addition, they found nothing in the record to conclude that the contract was void or that it presented any significant risks to the government.

Other contracting officials told us they had not thought that their contracts needed to go through the CRC. In one case, the U.S. Marshals Service issued five separate orders under the same contract number to the same company on September 26, 27, and 28, 1983. The amount of the orders ranged from about $36,000 to $49,984, just under the $50,000 sole-source threshold for CRC review. All the orders were placed against one basic ordering agreement, which is a written instrument of understanding between a contractor and the government setting forth clauses for future procurements. Before the orders were issued, the Service had submitted a basic ordering agreement for more

than $240,000 to the CRC for review. The CRC did not formally review the agreement, but its staff told the contracting officer that several deficiencies in the agreement would probably cause the CRC to reject it. In November 1983 the CRC staff, in its routine search for large dollar contracts not submitted to the CRC, was reviewing information submitted to the Federal Procurement Data System. At that time, it discovered the orders had been issued and asked to review the contract file. Upon its review, the CRC noted that none of the changes discussed earlier with the contracting officer had been made, and the five orders were not legal.

Other contracting officials had various other reasons for not submitting certain contracts to the CRC. These included not realizing that letter contracts or options had to be submitted, not believing that indefinite dollar value contracts had to go to the CRC even though the estimated value was over the CRC's threshold, and not otherwise properly interpreting CRC review procedures.

Because we encountered such a variety of reasons for why contracts were not submitted to the CRC, we believe Justice should reemphasize its policy that all contracts that meet the established threshold are to be submitted to the CRC prior to award. It should do this by clarifying its submission requirements so there is no misunderstanding of what types of contracts should be submitted to the CRC.

JUSTICE PROCURING ORGANIZATIONS FOLLOWED MOST CRC RECOMMENDATIONS

In fiscal year 1983 the CRC rejected 62 contracts containing deficiencies in our 20 selected categories as being legally insufficient for award but not warranting a further CRC review. Generally, according to a CRC member, the CRC believed the problems it found in instances like these were straightforward and easy to remedy. Consequently, to expedite the award of contracts such as these, the CRC allowed the procuring organization, after making the changes identified, to award the contracts without resubmitting them to the CRC. However, because the CRC performed no follow-up reviews in these cases, it did not know if its recommendations were being followed. We found, however, procuring organizations generally were following committee recommendations.

Of the 62 rejected contracts in this situation in fiscal year 1983, 49, or about 79 percent, were supported by files

showing that all the recommendations, implied or otherwise, we analyzed were addressed by the procuring organization or that CRC comments did not require follow up. In 13 contracts, or about 21 percent, at least one recommendation had not been followed. In 11 of the 13 contracts, worth about $2.9 million, CRC staff told us that, in their opinions, the unaddressed recommendations would have still caused the contract to be legally insufficient for award. The recommendations should have been addressed as required but were not addressed for various reasons, including the disagreement of procuring organizations. Our procurement attorneys examined contract files for these 11 contracts to analyze, among other things, what risks Justice procuring organizations might have taken by awarding the contracts without addressing the CRC's comments. The attorneys qualified their views because they only examined the contract files without comments from the parties involved.

In 6 of the 11 contracts, our attorneys, based on the limited information, either could not assess the situation (2 contracts) or did not necessarily agree with the CRC (4 contracts). In the latter category, on one contract the attorneys could not conclude that the contracting officer's decision to conduct a price analysis rather than a cost analysis was unreasonable. The CRC had contended that a cost analysis should have been done. In another case, the CRC could not locate a certificate of current cost and pricing data in the contract file. Our attorneys contended that a certificate was not needed because the contract was for less than $100,000.

In the remaining five contracts, our attorneys concluded that matters could have been handled better by contracting officials, although the attorneys did not agree with all CRC positions. Qualifying their views, they drew no specific conclusions that significant risks were being taken when changes to accommodate CRC comments in our 20 categories were not made. Similarly, they saw nothing in the record that they were provided to conclude, as the CRC had, that two of the contracts were void or illegal.

In summary, our attorneys' review of CRC findings that were not addressed by contracting officials presents a mixed picture. Although our attorneys did not always agree with the CRC's conclusions or believe a significant risk resulted from not acting on them, the CRC did correctly identify areas where improvements could be made.

JUSTICE ACTIONS TO IMPROVE PROCUREMENT ACTIVITIES

In response to a 1980 Presidential initiative to upgrade agency procurement management and thus combat waste, fraud, and abuse, Justice told the Office of Management and Budget of a four-pronged effort to strengthen its system of procurement management control. The establishment of a CRC was the only part of the effort to come to fruition. The other three segments involved publishing integrated, coherent Justice procurement regulations; publishing Justice certification standards specifying training and experience levels for contracting officers; and continuing the then recently implemented reviews by procurement experts of procurement operations throughout Justice.[7] These three efforts have been delayed. The procurement executive told us that the reasons for the delays were that Justice needed to focus first on the Procurement and Contracts Staff operations problems, did not have sufficient resources, and was awaiting the publication of the governmentwide Federal Acquisition Regulation.

In November 1983, Justice internal auditors reported that the Procurement and Contracts Staff or Justice in general (1) had only a few Justice-wide procurement policies; (2) had not discharged responsibilities for Justice-wide oversight or, more specifically, performed periodic procurement inspections; and (3) had no adequate contracting officer career management program, including such features as training of the procurement work force. In his response to a draft of the audit report, Justice's procurement executive agreed that procurement improvements were needed. Specifically, he agreed with the recommendations to (1) develop overall strategies and plans for generating Justice procurement policies and carrying out oversight responsibilities and (2) establish a career management program to assure a highly qualified, well-managed work force. A career management system would include a certification program. Thus, the procurement executive committed himself to taking action addressing the longstanding needs for improved policies, oversight, and training.

In addition, in May 1984 the procurement executive for the first time distributed throughout Justice a document summarizing

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[7]The only published report had been a critical one of the Immigration and Naturalization Service, which preceded the CRC's existence.

and analyzing the CRC's most frequent comments on deficiencies found in contracts during the period October 1983 through March 1984. The document's purpose was to alert all contracting officers to common or repeated deficiencies. The procurement executive believed that the information would help contracting officers and reviewers be more aware of the deficiencies and thus improve the overall quality of Justice contracts. In the May 1984 document he stated that subsequent summaries will be done every 6 months. He also stated that summaries are to be followed by written guidance issued by the procurement executive to address the main problems found.

We believe this use of CRC findings is a step in the right direction because it pinpoints recurring deficiencies. However, we also believe that periodic summaries will be even more useful if they are supplemented by periodic oral presentations given by the CRC to contracting officials. Such presentations will add life to the written word and provide a forum for questions and answers on how to improve contracting activities. In addition, we believe that the procurement executive should use CRC findings when developing strategies for carrying out procurement inspections and other oversight functions, such as deciding who and what to inspect, and for establishing the training component of, and training materials for, a career management program. The committee and Justice's 1984 management report had attributed the committee's continuing findings to problems with procurement policies, training, and oversight functions, such as inspections.

CONCERN OF CONTRACTING OFFICIALS WITH CRC OPERATIONS

As stated earlier, contracting officials often disagreed with CRC determinations, even though they made changes to comply with CRC recommendations. Of 273 CRC findings we discussed with 42 available officials responsible for the reviewed contracts, the officials agreed about 61 percent of the time. However, they disagreed about 29 percent of the time and were undecided another 10 percent of the time. These disagreements and concerns stemmed from the contracting officials' beliefs that the CRC missed items in contract files, often identified minor deficiencies because the important findings it once had were no longer occurring, subjectively differed from contracting officers in its interpretation of Federal Procurement Regulations, exceeded its authority and intruded on the authority of contracting officers, identified deficiencies without making specific suggestions, and had adversarial relationships with

certain Justice procuring organizations. They also asserted that appealing a CRC decision was not a viable alternative because of the high-level official that needs to be involved (the Deputy or the Associate Attorney General) and because of the need to award contracts quickly. The appeal mechanism has been used only once since the establishment of the CRC.

Because of time limitations, we did not systematically try to confirm or deny these contentions. However, as described on pages 18 and 19, our attorneys reviewed 11 contract files to assess, among other things, the risks Justice procuring organizations ran by not addressing CRC recommendations. In doing so, although they had to qualify their views because of information limitations, the attorneys found that at times they too disagreed with CRC positions. At other times, they agreed or recognized that procurement improvements could be made. In one case they said that the exercising of delegated procurement authority by the contracting officer without first obtaining a preaward CRC review did not make the resulting contract unauthorized. The CRC believed otherwise.

Similar sentiments of contracting officials concerned about CRC operations were echoed in the May 1984 Justice management report on the CRC. For instance, 39 percent, or 9 of 23 respondents to an evaluation staff question, said they disagreed with CRC findings more than 75 percent of the time on contracts of theirs found legally insufficient for award. In contrast, as stated on page 12, the other 61 percent, or 14 of the 23 respondents, agreed with committee findings anywhere from about 50 percent of the time to all of the time. In addition, 75 percent, or 21 of the 28 respondents to another question, believed that the major detriment to the CRC review process was that the contracting officers' authority was reduced without a corresponding reduction in their responsibility. According to the 1984 Justice report, contracting officials believed the CRC went beyond questions of compliance with procurement provisions into questions of interpretation, which the contracting officials believed was their responsibility. A majority of contracting officials indicated to the evaluation team that CRC comments were not substantive enough and additional feedback was needed.

The Justice management report contained many recommendations to streamline the contract review process and change its organizational placement. In its response to a draft of that report, the CRC stated its intention to develop procedures for contracting officers to personally attend CRC meetings when

their contracts are being reviewed in order to foster a better understanding concerning specific findings. In addition, the CRC also stated that it intended to develop specific procedures for filing and processing appeals. Efforts such as these should increase the flow of information between the CRC and contracting officials. The CRC executive secretary told us on August 20, 1984, that these efforts have not yet come to past because of proposed changes to Justice's procurement organization.

One of the May 1984 management report's recommendations was to move the contract review function from its location where it is independent of other procurement officials, place it under the procurement executive, and have the procurement executive report to a higher organizational level--the Deputy Assistant Attorney General for Administration. The report noted that this arrangement would be consistent with the procurement executive concept of providing agencywide, as opposed to disjointed, authority and responsibility for procurement. The report recommended also that the CRC itself become an appeals board. In other words, the staff reporting to the procurement executive would conduct final contract reviews, not the currently independent CRC. According to the report, these changes would streamline the initial review function and provide for a more effective appeals function.

We believe that because problems still exist in Justice contract activities, Justice should not dilute the internal control aspects and independence of the CRC's review when making changes in the review function's organizational placement. We believe that a staff reporting to the procurement executive would be less independent of procurement operations than the current arrangement of a staff working for a CRC composed of high-level officials from different parts of Justice, unless the procurement executive was independent and reported to a high-level official.

The procurement executive currently reports to a level below the Deputy Assistant Attorney General for Administration. If he were given the review function but maintained his current reporting relationship, he would not be at a higher level than the head of procurement operations whose contracts his staff would be reviewing. Also, the arrangement would be counter to the Office of Management and Budget's preference (stated in its proposal for a uniform federal procurement system) that the procurement executive be at, or report to, the assistant secretary level in agencies where procurement volume is large and significant to the agency mission. We believe the

evaluation report's recommendation is a reasonable way of addressing these concerns.

CONCLUSIONS

The CRC has improved the Justice contracts it has reviewed and has improved Justice's contracting practices. Contracts and contract files were changed based on CRC findings, and internal Justice reports and contracting officials in Justice procuring organizations cite improvement in contracting practices.

Justice has recently begun to take action to further improve contracting practices. Because the CRC still finds deficiencies in contracts and some of its findings are recurring, the procurement executive's May 1984 start at summarizing common or repeated deficiencies is a positive step. The procurement executive has told Justice contracting officials that summaries of common deficiencies will continue to be prepared periodically and will be supplemented by guidance issued to prevent future recurrences of the findings.

Another area relating to the CRC also needs attention. Specifically, many contracts that should have been sent to the CRC were not. However, for the contracts that were sent to and reviewed by the CRC, most CRC recommendations were addressed by the procuring organizations.

The procurement executive has acknowledged the need to improve Justice procurement. Inadequacies in procurement policies, training, and oversight have been cited as underlying reasons for the CRC's continuing findings. We believe that any efforts to deal with these inadequacies would benefit from using the CRC's findings. For instance, the CRC findings should be used when Justice decides what procurement activities to inspect and what specifically to examine within those activities.

The CRC has stated its intention to improve communication with Justice contracting officers. We believe that if the CRC made periodic oral presentations of its findings to contracting officers, concerns that existed within Justice about CRC operations would be better addressed and more information would be available to prevent serious and recurring deficiencies. These periodic presentations could supplement the summaries of common deficiencies that the procurement executive will be preparing.

How to streamline Justice's contract review process and change its organizational placement was the focus of a May 1984

Justice internal management report. One of the May 1984 report's recommendations was to have a review staff perform the final contract review and a CRC deal only with appeals. Because the CRC finds serious and recurring problems, we believe Justice should make sure that any organizational change undertaken does not dilute the independence and internal control aspects of the review function. The management report's reorganization recommendation to place the review function under the procurement executive and have the procurement executive report to the Deputy Assistant Secretary for Administration is a reasonable way to guard against this happening.

RECOMMENDATIONS TO THE ATTORNEY GENERAL

We recommend that the Attorney General

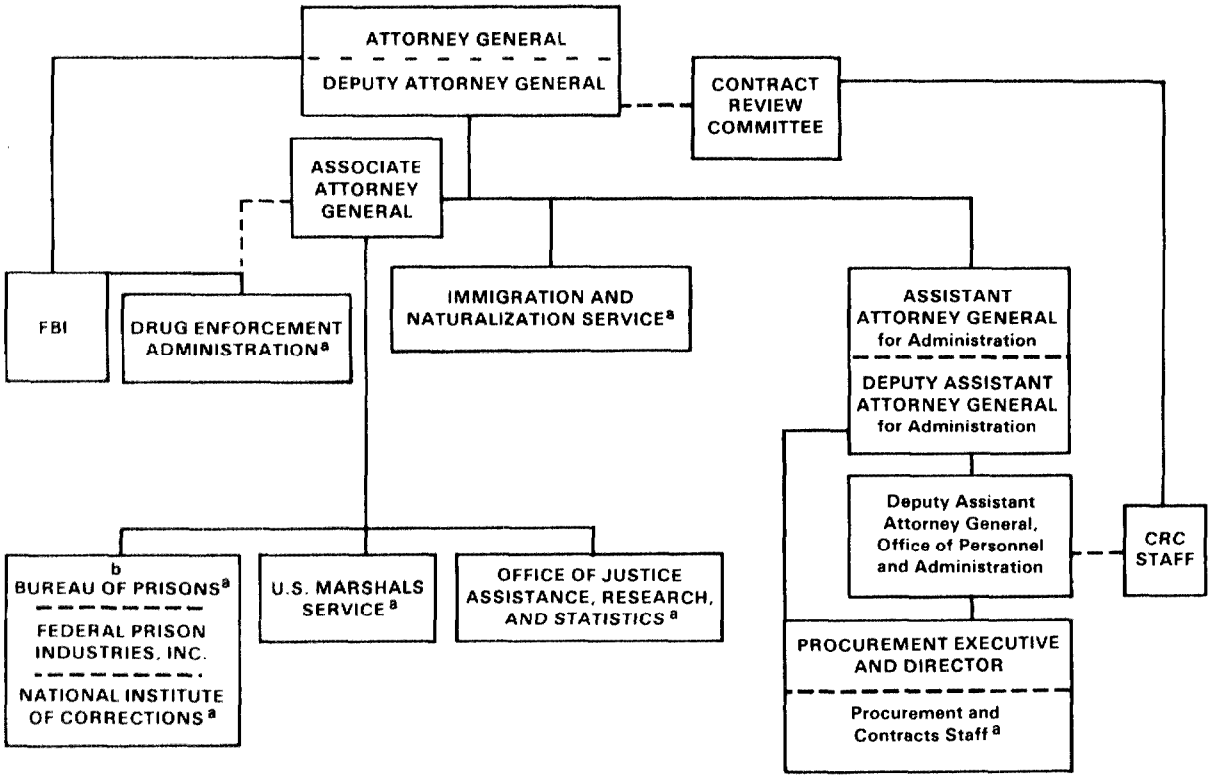
--direct the CRC to make periodic oral presentations of its findings to contracting officials.

--clarify Justice's policy to delineate the types of contracts that should be submitted to the CRC so as to ensure that the CRC receives all contracts it should review. These types of contracts should include letter contracts; purchases of various specific services, such as expert witnesses; exercise of options; and contracts with indefinite dollar amounts estimated to be above the CRC's threshold.

--direct the procurement executive to use CRC findings when developing strategies for carrying out procurement inspections and other oversight functions, such as deciding who and what to inspect, and for establishing the training component of, and training materials for, a career management program.

In addition, if the contract review functions are given to the procurement executive, we recommend that the Attorney General have this official report to a level no lower than the Deputy Assistant Attorney General for Administration.

ORGANIZATION CHART OF THE DEPARTMENT OF JUSTICE WITH SPECIFIC REFERENCE TO PROCUREMENT ACTIVITIES



[a] Organizations whose contracts are subject to CRC review.

[b] These entities are parts of the Federal Prison System.

SOURCE: Adapted from Justice's internal management report on the contract review committee's role in the procurement process and from other organization charts.

GLOSSARY OF CONTRACT REVIEW COMMITTEE DEFICIENCY CATEGORIES GAO EXAMINED

Approval for noncompetitive awards--the requirement that, with some exceptions, contracts above a certain dollar level shall not be negotiated on a noncompetitive basis without prior review at a level higher than the contracting officer.

Certificate of current cost and pricing data--a submission in which a contractor certifies that, to the best of his or her knowledge and belief, cost or pricing data provided or identified were accurate, complete, and current before award.

Competitive range determination--a determination of which offerors are the ones with whom negotiations are required to be conducted before award of a negotiated contract.

Conduct of negotiation--how negotiations are conducted between a proposed contractor and the government on all basic issues, such as price.

Consulting services--services of a purely advisory nature normally provided by persons and/or organizations who are generally considered to have knowledge and special abilities that are not generally available within an agency.

Cost analysis/cost realism--the evaluation of a contractor's cost or pricing data and of the judgmental factors used to project from these data to estimated costs so that how closely the proposed costs represent what the contract should cost can be assessed, assuming reasonable economy and efficiency.

Determination of price reasonableness--conclusion by a contracting officer, resulting from some form of price or cost analysis, as to whether a negotiated proposal is fair and reasonable.

Determinations and findings--written justifications by a contracting officer or higher authority for entering into contracts by negotiation, making advance payments in negotiated procurements, and determining the type of contract to use.

Evaluation criteria/evaluation of bids/proposals--

1. Evaluation criteria--the manner specified in the request for proposals by which proposals submitted will be evaluated.

2. Evaluation of bids/proposals--the assessment of precontract submissions, using technical and cost standards.

Formal advertising/negotiation solicitation procedures--

1. Formal advertising solicitation procedures--procurement procedures using competitive bids and awards and involving the preparation of invitations for bids.

2. Negotiation solicitation procedures--procurement procedures not using formal advertising but involving the preparation of a request for proposal.

Government estimate/estimated quantities in contracts--

1. Government estimate--an independent government estimate of the cost of the required services based on a detailed analysis of the costs expected to be generated by the work.

2. Estimated quantities--a government estimate of total quantities of property or services required for the information of prospective contractors.

Justification for noncompetitive procurement--a documentation of the facts and circumstances substantiating the infeasibility of competition.

Letter contracts--an interim type of contractual agreement authorizing someone to begin manufacturing supplies or performing services.

Misuse of appropriations/availability of funds--

1. Misuse of appropriations--the improper use of money appropriated by the Congress.

2. Availability of funds--the determination that money is available and can be obligated.

Options--unilateral rights in contracts by which, for a specified time and at a guaranteed price, the government may purchase additional supplies or services called for by the contract or extend the term of the contract.

Price analysis--the process of examining a prospective contract price without evaluating the separate cost elements and proposed profit of the prospective supplier.

Ratification/oral award/confirming order/reformation--

1. Ratification--action taken by a designated contracting officer to approve, sanction, and/or confirm a previously unauthorized procurement commitment.

2. Oral award--oral agreement by parties upon an award's terms and conditions with the intention that it shall then become binding.

3. Confirming order--action taken to provide written documentation of a previous, authorized procurement action.

4. Reformation--remedy afforded to the parties to written instruments that import legal obligation to reform or rectify such instruments whenever they fail to express the real agreement/intention of the parties.

Responsiveness/responsibility--

1. Responsiveness--the quality of a bid in which it complies in all material respects with the invitation for bids so that all bidders may stand on an equal footing and the integrity of the formal advertising system may be maintained.

2. Responsibility--a prospective contractor's attribute that includes having adequate current or potential financial resources; the ability to comply with the required or proposed delivery or performance schedule; and a satisfactory record of performance, integrity, and business ethics.

Specifications/requirements document--

1. Specifications--a clear and accurate description of the technical requirements for a material, product, or service.

2. Requirements document--a document outlining the needs of the government, sent to the contracting officer by the procuring activity.

Unsolicited proposals--written offers to perform proposed tasks, initiated and submitted by prospective contractors without solicitations by the government, with the objective of obtaining a contract.

IMPLEMENTATION OF THE PROSECUTOR'S MANAGEMENT INFORMATION SYSTEM AT JUSTICE

Senator Max Baucus by letter dated February 3, 1984, requested that we trace the history of a particular contract because of its size and scope. This contract and a modification awarded the same day totaled $9.9 million and were awarded by the Department of Justice to INSLAW, Inc.[1] The contract was for the development and installation of the Prosecutor's Management Information System (PROMIS) in 89 U.S. attorneys' offices in the continental United States and its territories.[2]

The 93 U.S. attorneys responsible for federal litigative activities in the 94 federal judicial districts receive general assistance and supervision from the Executive Office for U.S. Attorneys. The Executive Office also coordinates and directs the relationships of other litigative organizational units of Justice with U.S. attorneys' offices.

INTRODUCTION

We examined the major events surrounding the PROMIS project from its inception until its recent partial termination for the convenience of the government. In this regard, we examined the Executive Office's past attempts to develop a case tracking system; the contract with INSLAW's predecessor, the not-for-profit Institute for Law and Social Research (Institute), for a feasibility study of the management information needs of the U.S.

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[1]INSLAW, Inc., is a computer software and systems analysis firm specializing in case management and decision support applications for legal and criminal justice oriented organizations. The organization was a not-for-profit entity known as the Institute for Law and Social Research until it was acquired by INSLAW, Inc., in January 1981.

[2]At approximately the date this contract was awarded, one U.S. attorney's office (Canal Zone) was closed. As a consequence, the contract then called for the installation of PROMIS in 88 of the 94 U.S. attorneys' offices. Of the remaining six offices, one district is unstaffed (Northern Mariana Islands); four offices had been included in the pilot phase of this effort; and one office, the District of Columbia, had PROMIS installed under a different contract.

attorneys' offices; the contracts with INSLAW for testing PROMIS on an automated basis in two large U.S. attorneys' offices and on a semi-automated basis (using word processors) in two smaller offices; the subsequent contract awarded competitively to INSLAW to implement PROMIS nationwide; and the termination of the word processing portion of this contract for the convenience of the government. We also addressed the future of PROMIS and caseload management at Justice.

Since 1953 the Executive Office has tried several times to develop a centralized automated system to track legal cases and provide caseload statistics for budgetary purposes and the management needs of the Attorney General. The most recent attempt before PROMIS was the Automated Caseload and Collections System which was initiated in 1975. In 1978 Justice auditors found the system deficient in numerous areas. More specifically, the system was found deficient because it had been planned and designed with insufficient guidance from its "user," the U.S. attorneys, and therefore did not meet their information requirements and needs. As a result of this deficiency the system was abandoned. However, because of the positions of the Congress and the Office of Management and Budget favoring the development of a caseload management and debt collection system, Justice found itself needing to develop such a system with a limited amount of time.

INSLAW's development of PROMIS

PROMIS was originally developed by the Institute in 1971 to track criminal caseloads for the U.S. attorney's office for the District of Columbia. The funding for this development was provided through the Law Enforcement Assistance Administration. After 1971, PROMIS evolved into a system designed to perform a variety of automated functions associated with civil and criminal litigation. Because of the Institute's expertise, Justice entered into a contract with the Institute in 1978 to determine whether PROMIS could serve the information needs of both the Executive Office and the U.S. attorneys.

Since the Executive Office initiated its PROMIS project in 1978, the Department of Justice has awarded through either contracts or an interagency agreement a total of $13,091,553. Of this amount at least $11,882,796 had been expended as of May 16, 1984. The following chart shows by individual contract and interagency agreement the amount of the award and the actual expenditure of funds.

Contract	Amount of contract awards and modifications	Actual expenditures
Feasibility study (JAUSA-79-C-0070)	$ 57,961	a
Pilot contract (JAUSA-80-C-0070)	902,976	$ 902,976
Pilot contract (JKUSA-81-C-0077)	1,289,204	1,287,913
Enhancement of project (J-LEAA-006-79)[b]	650,000	650,000
Evaluation of pilot project (JTUSA-81-C-0304)	207,121	190,258
Implementation of PROMIS (JVUSA-82-C-0074)	9,984,291	8,851,649[c]
Total	$13,091,553	$11,882,796

[a]The file containing the actual expenditures for the feasibility study could not be located by Justice's Office of Finance.

[b]This transfer of funds, accomplished by a reimbursable interagency agreement, applied to Executive Office enhancements to the PROMIS system being developed under a Law Enforcement Assistance Administration contract for state and local governments.

[c]As of August 10, 1984, the final amount to be paid INSLAW was still the subject of ongoing settlement proceedings between Justice and INSLAW.

Each of these contracts is discussed in detail in the following sections.

FEASIBILITY STUDY

In December 1978 Justice awarded a noncompetitive contract in the amount of $57,961 to the Institute to study the management information needs of the Executive Office and the U.S. attorneys' offices. The contract resulted in a report that presented the information requirements of the offices, identified the proposed components of a caseload management information system, considered three approaches to structuring these components, and analyzed the alternatives' costs and benefits.

Also identified were a variety of functions in U.S. attorneys' offices that would benefit from applying computer technology. These included legal brief indexing, word processing, collections accounting, evidence management, Speedy Trial Act reporting, case weighting, and many other administrative activities.

On the basis of the feasibility study, Justice awarded the Institute a contract to test PROMIS in selected U.S. attorneys' offices.

THE PILOT PROJECT

Like the feasibility study, the initial and subsequent contracts for the pilot effort were awarded noncompetitively. The expenditures for these two contracts amounted to $2,190,889. The purpose of the pilot project was to install and have fully operational an automated version of PROMIS using mini-computers in two large U.S. attorneys' offices--San Diego, California and Newark, New Jersey--and to do the same with a semi-automated version on word processors in two small offices--Charleston, West Virginia and Burlington, Vermont. In addition to the contracts for this effort, Justice awarded a contract to International Business Services, Inc. to independently evaluate the pilot project.

Pilot contracts

The original contract for the pilot effort was awarded October 11, 1979, and was due to expire October 10, 1980. However, the contract's expiration date was extended to January 9, 1981. Justice and INSLAW, Inc. officials stated that when the contract expired in January, the pilot project had not been completed and only the two automated systems in the large U.S. attorneys' offices were operational. The reasons cited by both Justice and the contractor for the contract not being completed were unexpected delays in the procurement, delivery, and installation of equipment.

A letter contract was awarded to INSLAW on March 27, 1981, to continue the pilot work. This letter contract, which was definitized on August 14, 1981, contained precontract cost provisions to cover costs incurred by INSLAW, Inc. from January 12 through March 27, 1981. The definitized contract was to expire December 31, 1981, when it was expected that the technical assistance would be complete and the pilot systems fully operational. On December 31, 1981, a modification to the contract was awarded extending the pilot project to March 31, 1982. On March 12, 1982, work under this contract was halted even though, according to officials from Justice and the contractor, PROMIS was not completely operational in the two districts with word processing equipment. INSLAW officials contended that this

situation was due to their not having access from Justice to everything they needed. Nevertheless, the PROMIS implementation contract began on March 16, 1982.

Independent evaluation of pilot project

In November 1980, International Business Services, Inc. was awarded a contract to evaluate the pilot effort. More specifically, this contract was to evaluate the performance of PROMIS on a decentralized basis using both mini-computers and word processors. In this regard, the contract called for the preparation and delivery of a total of six reports to include discussions of a cost/benefit analysis, procurement strategy, recommended hardware configurations, and the feasibility of PROMIS as the principal caseload management system for the Executive Office and the 89 U.S. attorneys' offices.

The third of these six reports dealt with alternative procurement strategies and recommended that each attorney's office receive and operate its own information processing equipment. According to the Executive Office's Director of Office Management Information Systems and Support, this was viewed as the most important of the six and was delivered by International Business Services, Inc. in July 1981, well before implementation of PROMIS began in March 1982. A draft of the fourth report was not delivered, however, until January 1983. At that time it was decided to terminate any work remaining on the contract because the Executive Office and the contractor agreed that further work on evaluating the pilot was irrelevant as the most important of the reports had already been delivered.

IMPLEMENTATION OF PROMIS

The decisions to implement PROMIS in the Executive Office for U.S. Attorneys and 89 U.S. attorneys' offices and to award the contract competitively were made by the PROMIS Oversight Committee. The committee, a four-member body established to make decisions on caseload management, was confronted with two approaches for implementing PROMIS. One approach consisted of a totally centralized system that used a main centralized data center and would be connected to the various U.S. attorneys' offices by telecommunication. The other system was the decentralized system that had been field tested in the four U.S. attorneys' offices. (See p. 33.) According to a former assistant director in the Executive Office, the committee selected the decentralized approach because of the high cost of the telecommunication aspect of the centralized system. Also, we were informed by the Director of the Executive Office that the committee was influenced by the inability of the previously tested centralized system to meet the local information needs of the U.S. attorneys.

As discussed previously, PROMIS was pilot tested in four U.S. attorneys' offices. Mini-computers were tested in two large offices, and word processors were tested in two smaller offices because their workload would not justify the cost of mini-computers. Justice officials said that the operations of the mini-computers in the two large offices had been successful. However, the two smaller U.S. attorneys' offices were experiencing problems with the word processing software. This prompted a concern among committee members as to whether the word processors should be used or whether Justice should wait until new technology was developed. According to a committee member, the committee decided to install the word processors because of the longstanding positions of the Office of Management and Budget and the Congress supporting a caseload management system.

At the time the committee decided to implement a decentralized system, it also decided to award the contract for the implementation phase competitively rather than sole source. Justice publicized the procurement in the Commerce Business Daily on September 1, 1981, and on October 9, 1981, issued a proposed statement of work for industry comment. On November 2, 1981, Justice issued a request for proposals, received by 104 firms. However, in the 30 days allowed for proposals, only two firms submitted them. One of the firms was INSLAW, which was determined best qualified to implement PROMIS as envisioned by the committee. As a result, INSLAW was awarded the contract to implement PROMIS on mini-computers in 20 large U.S. attorneys' offices and on word processors in the remaining 68 smaller offices.[3]

The implementation of PROMIS within the U.S. attorneys' offices has met with mixed success. According to Justice, it anticipates that 18 of the 22 large U.S. attorneys' offices using the mini-computers will be fully operational by the end of fiscal year 1984. Justice officials told us that the remaining four will not be operational because of ongoing computer room construction in those U.S. attorneys' offices. However, difficulties encountered by both Justice and INSLAW hindered the development and installation of the total system. Once the word processing equipment was delivered and the installation begun, complications were experienced in the development of the software for those offices with the word processors, as was the case during the pilot effort. As a result, Justice decided to terminate the word processing portion of the contract.

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[3]The four remaining offices were designated to have PROMIS installed during the pilot phase.

Termination of the word processing portion of the PROMIS contract

On January 5, 1984, Justice notified INSLAW that the government was considering terminating the word processing portion of the contract because the contractor had not made sufficient progress in implementing the word processing version of PROMIS. On January 13, 1984, INSLAW responded to the government's contention by presenting its argument against termination. The essence of INSLAW's argument, as summarized by the Executive Office, follows:

--"There was no agreed-upon standard by which progress can be measured on the word processing based systems.

--Government actions have precluded a faster pace for word processing based implementations.

--INSLAW has demonstrated expertise in developing word processing based solutions as well as diligence in the application of that expertise."

In a technical analysis of INSLAW's comments, the Executive Office summarized the following reasons on January 27, 1984, for pursuing partial termination:

--As of the date of notification, January 5, 1984, "twenty-two months of a thirty-six month contract with INSLAW to implement and support PROMIS in the United States Attorneys' Offices have elapsed, but none of the sixty-nine word processing sites has been fully implemented, and only five of those sites have been partially implemented (civil and criminal subsystems).

--At the time of the notification, the collections software for the word processing version of PROMIS had not been delivered.

--Each office using PROMIS must provide the Executive Office for United States Attorneys (EOUSA) with a monthly extract from their data base. INSLAW has failed to deliver the software which allows the extracts from the word processing offices to be merged with the central data base maintained in Washington. As a result, caseload statistics from word processing districts are unavailable and these offices receive no computer generated listings from Washington indicating the quality of the data in their local systems.

--INSLAW cannot implement all 69 word processing sites within the time remaining under the contract, even if the implementation schedule is extended from 30 to 36 months as INSLAW proposes, and it is questionable if INSLAW could implement successfully even without time constraints."[4]

On the basis of advice received from its Administrative Counsel, Justice decided not to terminate the contract on the basis of default due to the lack of any binding implementation schedule against which the contractor's performance could be adequately measured. This being the case, Justice would have to "find in the language or actions of the contractor clear and unmistakable evidence of a refusal or inability to perform." Therefore, effective February 13, 1984, Justice terminated the portion of the contract dealing with the word processing portion of PROMIS for the convenience of the government. As of August 10, 1984, Justice and INSLAW had not yet resolved contract settlement costs.

FUTURE OF CASELOAD MANAGEMENT

The Executive Office for U.S. Attorneys still believes that a decentralized word processing based system can be implemented. Consequently, Justice plans to implement such a system using in-house personnel instead of a contractor, with the exception of using a contractor to help develop the needed software. To accomplish this, an official for the Executive Office stated that the Office plans on hiring 15 temporary employees over a 3-year period to implement a system in 71 U.S. attorneys' offices that were scheduled to receive word processors under the INSLAW contract.[5]

The Executive Office's Director of Office Management Information Systems and Support stated that on the basis of the workload in these 71 U.S. attorneys' offices, 8 will use mini-computers because their workload now justifies the cost, up to 15 will receive smaller mini-computers that use the same software as the other mini-computers but do not require computer room construction, and the remaining 48 offices will use word processors. The Executive Office believes the word processor approach

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[4]INSLAW officials told us they disagreed with Justice's contention and had not been given a chance to respond.

[5]Included in the 71 offices will be the District of Columbia U.S. attorney's office which the Executive Office had originally planned to implement fully under the separate contract with INSLAW mentioned on page 30.

will be workable because each of the 48 offices will be using a standardized system rather than tailoring a system to each U.S. attorney's office. The Executive Office intends to have a system implemented nationwide by 1987, instead of March 1985 as originally planned.

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When the implementation contract was awarded in March 1982, Justice intended to have PROMIS implemented and operational in U.S. attorneys' offices nationwide by March 1985. Even though Justice's goal will not be met, Justice officials said they view PROMIS as being successfully implemented by the end of fiscal year 1984 in 18 of the 22 large U.S. attorneys' offices using mini-computers. Further, Justice believes that while the word processors have not been able to implement PROMIS as envisioned they have increased the productivity of the small U.S. attorneys' offices. However, the delay in obtaining a case management and debt collection system nationwide leaves Justice in the position of being unable to produce reliable data for management and budgetary reporting purposes.

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