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INTERNATIONAL TRADE ADMINISTRATION

Improvements Are Needed in ITA's Management of Interagency and Other Special Agreements

Inspection Report No. IPE-10752 / September 1998

Office of Inspections and Program Evaluations

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EXECUTIVE SUMMARY

Interagency and other special agreements are mechanisms for federal agencies to define terms for performing work for others (reimbursable agreements), acquiring work from others (obligation agreements), or coordinating complementary programs without the transfer of funds (memoranda of understanding or agreement, also referred to as unfunded agreements). These agreements can be between Commerce Department entities; or between one Commerce unit and another federal agency, a state or local government agency, a university, a not-for-profit organization, or a private party. They involve a significant amount of federal resources, but are not normally subject to the same controls as traditional procurement contracts, grants, or cooperative agreements.

The International Trade Administration uses such agreements to carry out its mission to develop and implement bilateral, multilateral, and regional economic policies, strengthen the export competitiveness of U.S. industries, administer the antidumping and countervailing duty laws of the U.S., and help U.S. exporters compete in a global economy. ITA enters into its agreements with other federal agencies, states and local governments, and local or regional international trade organizations. Agreements are one method for ITA to formally agree to share information, provide needed services, or coordinate its programs to optimize the benefits from its export trade partner agencies or multiplier organizations. If properly monitored and controlled, agreements are necessary and beneficial to define the roles and responsibilities of each of the parties so that the greatest return is realized from similar or complementary programs.

This is one report in a series to be issued as part of the Office of Inspector General's Department-wide review of agreements. The purpose of our inspection was to evaluate policies, procedures, and practices being followed by the bureau in its preparation, review, and management of reimbursable, obligation, and unfunded agreements. Overall, we found that ITA uses agreements to support its mission by acquiring and/or exchanging data or services, conducting joint statistical agreements, and acquiring information technology. However, improvements must be made in the agreements themselves, the review process, the policies that govern obligation and unfunded agreements, and the tracking of agreements.

During our review of ITA agreements, we made the following observations:

1. **ITA lacks formal, written guidelines and policies to guide its bureau in undertaking and formulating interagency agreements.** Although ITA program managers and administrative staff have operated under informal guidance, the lack of a written set of guidelines has resulted in many agreements being improperly handled. This includes a lack of proper legal authority citations, incomplete documentation to support the agreement's resources and scope of work, and failure to recover full costs, where appropriate (see page 4).

2. **ITA's U.S. Export Assistance Centers (operated by the U.S. Foreign and Commercial Service's Office of Domestic Operations) should use agreements more consistently.** Based on information provided to us or gained through interviews, we found inconsistencies in the perceived need for formal agreements between the USEACs and their state and local trade partners (see page 12).

3. **ITA should develop a centralized database of agreements.** ITA's lack of a centralized database of all the agreements it has in effect prevents its senior officials and program managers from having a complete picture of how the agency's resources are being used. We believe that a central database of all types of agreements would be a useful management and administrative tool, providing basic information, such as how many agreements exist, what agencies and other parties are involved, and total funding involved in agreements, to help better define performance measures and demonstrate results (see page13).

On page 15, we offer a series of recommendations to address our concerns.

In its written response to our draft report, ITA concurred with most of our findings and recommendations. ITA acknowledged the need to develop formal guidelines for agreements, ensure appropriate citation of legal authority, provide sufficient budget review of Economy Act and Joint Project Authority agreements, strengthen its legal review process, establish review periods and review/termination dates, and establish and maintain a centralized database. ITA did not agree with our recommendation that ITA should prepare determination and finding statements (D&Fs) for all agreements that cite the Economy Act as legal authority. We maintain that ITA must prepare D&Fs for Economy Act agreements to comply with the FAR as presently written and implemented. ITA also did not agree with our recommendation that ITA recover full costs for Economy Act agreements. We reiterate our position that the Economy Act itself calls for agencies to recover not only direct costs attributable to providing the goods or services ordered but also those indirect costs that bear a significant relationship to providing the goods or services. Although ITA differed as to the severity of the issues supporting these recommendations, it will evaluate the steps necessary for preparing D&Fs and will also examine its cost recovery practices. Prior to the completion of our draft report, ITA began an internal review of ITA agreements. We support ITA's efforts to identify actions to further improve the agreements, the approval process, and the tracking system.

In its written comments to our draft ITA report, the Office of General Counsel agreed with the formal recommendations in our report and is working with ITA to resolve the issues identified.

INTRODUCTION

Pursuant to the authority of the Inspector General Act of 1978, as amended, the Office of Inspector General conducted an inspection of ITA's management of interagency and other special agreements during the period October 3 to December 18, 1997. The inspection was conducted as part of a larger Department-wide review of these agreements. This inspection was conducted in accordance with the *Quality Standards for Inspections* issued by the President's Council on Integrity and Efficiency.

Inspections are special reviews that the OIG undertakes to provide agency managers with timely information about operations, including current and foreseeable problems. Inspections are also done to detect and prevent fraud, waste, and abuse and to encourage effective, efficient, and economical operations. By highlighting problems, the OIG intends to help managers move quickly to address those identified during the inspection and avoid their recurrence. By the same token, inspections may also highlight effective programs or operations, particularly if they may be useful or adaptable for agency managers or program operations elsewhere.

PURPOSE AND SCOPE

Interagency and other special agreements are mechanisms for federal agencies to define terms for performing work for others (reimbursable agreements), acquiring work from others (obligation agreements), or coordinating complementary programs without the transfer of funds (memoranda of understanding or agreement, also referred to as unfunded agreements). These agreements involve a significant amount of federal resources, but are not subject to the same controls as grants, cooperative agreements, or traditional procurement contracts.

We defined interagency and other special agreements as agreements that are *not* traditional procurement contracts, grants, or cooperative agreements.[1] For simplicity, we use the term "agreement" to refer to the various types of interagency or other special agreements within our scope. Agreements can include memoranda of agreement/understanding, purchase orders that document both parties' acceptance, or any other document that details the terms of an agreement and the parties' acceptance. Agreements can transfer funds from one party to the other, bind one

[1] The Federal Grant and Cooperative Agreement Act of 1978 defines these types of agreements: **Procurement contracts**—legal instruments "reflecting a relationship between the United States Government and a State, a local government, or other [non-federal] recipient when . . . the principal purpose . . . is to acquire (by purchase, lease, or barter) property or services for the direct benefit or use of the United States Government" (31 U.S.C. § 6303); **Grants**—legal instruments used when "(1) the principal purpose of the relationship is to transfer a thing of value to a State or local government or other recipient to carry out a public purpose of support or stimulation authorized by a law of the United States . . . and (2) substantial involvement is not expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement" (31 U.S.C. § 6304); **Cooperative agreements**—differ from grants only in that they are to be used when substantial involvement by the executive agency is expected (31 U.S.C. § 6305).

or both parties to commit funds to a project, or not involve any resources.

This report is part of a series of reports to be issued on our Department-wide review of agreements. The purpose of the inspection was to evaluate policies, procedures, and practices being followed at both ITA headquarters and field locations in carrying out their responsibilities related to these agreements. We also evaluated substantive issues, such as the relationship of the agreements to ITA's mission and whether the agreements are being used to circumvent procurement or financial assistance processes. At the time of our inspection, ITA had 164 agreements in effect, 73 of which we reviewed.

BACKGROUND

ITA's principal mission is to expand the export potential of U.S. companies and enforce U.S. import laws and regulations. ITA accomplishes its trade mission through three of its operating components: the U.S. and Foreign Commercial Service (US&FCS), Market Access and Compliance (MAC), and Trade Development (TD). Among their other trade-related tasks, these units collect and distribute information on foreign markets that hold export potential for U.S. firms, analyze economic and financial data from foreign trade ministries and other sources, support U.S. trade policy development, counsel U.S. exporters on market opportunities overseas, and offer trade-related services and trade events/missions to help U.S. exporters compete in foreign markets. A fourth component of ITA, the Import Administration (IA), administers U.S. antidumping and countervailing duty laws.

Table 1: Summary of ITA's FY 1997 Resources and Agreements

Operating Unit	Base Budget Authority ($000)	Staffing	Agreements					
			Reimbursable		Obligation		Unfunded	Total No.
			No.	Value ($000)	No.	Value ($000)	No.	
Executive Direction and Administration	$ 11,480	143	21	$ 714.6	22	$12,706.2	0	43
US&FCS	160,147	1,305	9	3,315.8	21	14,226.1	56	86
TD	55,114	392	6	1,913.8	9	193.2	0	15
MAC	24,422	186	2	282.6	14	446.1	0	16
IA	26,917	304	0	0	4	354.6	0	4
Total	**$278,080**	**2,330**	**38**	**$5,944.2**	**70**	**$27,926.2**	**56**	**164**

Source of data: ITA's Office of Administration and its program offices

During our Department-wide review of agreements, we attempted to identify the volume and dollar value of agreements in each bureau. Table 1 illustrates the relative size of the ITA operating units (including their headquarters staff) and the respective number and value of all agreements, including those that do not involve a transfer of funds.

ITA's agreements are primarily entered into with other federal agencies and are heavily oriented toward obligation agreements. Over 40 percent of the value ($11.8 million) of ITA's obligation agreements is represented by one agreement with the State Department to acquire administrative services for ITA's US&FCS offices located overseas. The obligation agreements are generally for the procurement of financial and general support services and trade data, and personnel details. The majority of US&FCS's agreements are memoranda of understanding issued under Commerce's Joint Project Authority (15 U.S.C. § 1525) for Export Assistance Centers collocated with their federal and non-federal trade partners. The reimbursable agreements (as authorized under the Economy Act, 31 U.S.C. § 1535) are generally entered into: (1) to provide services to other Commerce bureaus, such as through ITA's Telecommunications Center and its training center; (2) to conduct trade programs for other federal agencies, such as USAID and the Environmental Protection Agency; and (3) to support other Commerce agencies overseas for fisheries trade and standards programs (National Marine Fisheries Service and the National Institute for Standards and Technology).

OBSERVATIONS AND CONCLUSIONS

I. ITA Needs to Develop and Implement Guidelines to Address Deficiencies in Its Agreements

Our review revealed that ITA lacked formal written guidelines for undertaking agreements. The only guidance ITA has is an informal understanding that all agreements involving funding transfers must first be cleared through ITA's Office of Financial Management (OFM), which, upon approval, will then forward the agreements to the Department's Office of General Counsel (OGC) for legal review and clearance.

This lack of guidance is reflected in the varying degrees of completeness in the agreement documents. For example, ITA's reimbursable agreements with USAID covered all of the necessary elements and had adequate supporting documentation. By contrast, other agreements were merely a form-like transaction sheet listing the budget offices of the agreement participants, the accounting codes, and the relevant statutory citation. Of the 73 ITA agreements we reviewed, 45 of them, or over 61 percent, had incomplete documentation.

For the reasons outlined below, ITA needs to develop and implement comprehensive bureau-wide policies and procedures for undertaking and formulating its agreements. Without guidelines for executing agreements, ITA is vulnerable in many ways. For example, we found that ITA has agreements that lack the signatures of proper officials, and thus may not be legally binding on the other party. Furthermore, according to ITA officials, ITA has no policy to ensure that it recovers full costs on reimbursable agreements. In developing these policies and procedures, ITA should ensure that it addresses key elements in the agreement process: completeness of content; budgetary, procurement, and legal reviews; and full cost recovery. In addition, ITA program managers need to conduct periodic programmatic reviews of agreements.

In its written response to our draft report, ITA acknowledges the need to develop formal guidelines for agreements. ITA recognized that its existing guidance is minimal, out-of-date, and requires revision. ITA has been conducting an internal study of its agreements process during 1998 and has reached findings similar to those in our report. ITA states that it has drafted a basic two-page "how to" guide that includes sample formats for all types of its agreements, explains applicable authorities, delineates signature authorities, and outlines all necessary components for a complete and thorough agreement.

ITA states that it also intends to revise ITA's Administrative Instruction 3-1, "Reimbursable Agreements," to include all types of ITA agreements and issue new guidelines for review and clearance of all agreements beginning in the first quarter of fiscal year 1999. Once completed, ITA plans to distribute this guidance agency-wide and disseminate it through its on-line network.

Finally, ITA states that the steps identified above, in conjunction with a formalized clearance process, will address our concerns. These actions satisfy our recommendation.

A. Legal Authority for Agreements Should Be Appropriately Cited

In our review of ITA's agreements, we found that the legal authority for an agreement was not always cited. In addition, there were inconsistencies in the citation of legal authority: some cited a Comptroller General Ruling, other agreements cited the title and section from the U.S. Code, while still others would give the title of the authority in addition to the citation, if not a full definition of the authority.

ITA commonly uses two general authorities to enter into formal relationships with federal and non-federal parties. The Department's Joint Project Authority (15 U.S.C. §1525) is one of the most frequently cited authorities for ITA agreements; it authorizes Commerce agencies to enter into mutually beneficial projects with other governmental agencies, nonprofit organizations and research organizations. The costs of these joint projects are to be apportioned equitably. The Economy Act (31 U.S.C. §1535), another authority used by ITA, allows agencies to transfer and receive funds from other federal agencies for necessary projects.

Citation to proper legal authority is important because the type of authority chosen for a particular agreement affects the treatment of funds transferred under the agreement, including the timing or disposition of receipts. For example, the Economy Act requires that all payments for work or services performed be deposited to the appropriation or fund against which the charges have been made. Under the Joint Project Authority, all payments are deposited into a separate account that may be used to directly pay the costs of work or services performed, to repay advances, or to refund excess sums when necessary.

The type of legal authority used also affects the period of availability for funds transferred under an agreement. For Economy Act agreements, the period of availability of funds transferred may not exceed the period of availability of the source appropriation. Accordingly, one-year funds transferred by the requesting agency must be returned at the end of that fiscal year and deobligated by that agency, to the extent that the performing agency has not performed or incurred valid obligations under the agreement. When the agreement is based on some statutory authority other than the Economy Act, the funds will remain payable in full from the appropriation initially charged, regardless of when performance occurs. The funds are treated the same as contractual obligations, subject, of course, to the "*bona fide* needs" rule[2] and to any restrictions in the legislation authorizing the agreement. Therefore, it is necessary to determine the correct statutory authority for any agreement, in order to apply the proper obligational principles.

[2]The *bona fide* needs rule states that a fiscal year appropriation may be obligated only to meet a legitimate, or *bona fide*, need arising in, or in some cases arising prior to but continuing to exist in, the fiscal year for which the appropriation is made.

B. Budget Review of Economy Act and Joint Project Authority Agreements Should Be Strengthened

Currently, the OFM budget division staff reviews agreements to ensure that they are consistent with ITA's statutory authorities, mission, and programmatic policy. The OFM budget officer stated that the budget staff reviews the agreements to see that (1) they comply with existing appropriations law and ITA budget policies, (2) they include budget guidance for funds transfers, and (3) ITA has the statutory authority to conduct the work. They also ensure that the financial aspects of the agreements are proper, including the availability of ITA funds for an obligation or joint project agreement or the appropriate fiscal funding information for a reimbursable agreement. The budget division staff then assigns an account number to the agreement, which facilitates the collection or expenditure of resources associated with the agreement.

It is also critical that the review by budget staff ensures that the draft agreements include estimates of project costs. If the agreement is authorized under the Economy Act, the document must include total project costs to ensure full cost recovery, as required by the statute, OMB Circular A-25 on user fees, and the *Department of Commerce Accounting Principles and Standards Handbook*. If the project is performed under the Joint Project Authority, the agreement should not only include project costs but also indicate the contributions of each organization and demonstrate that the way in which the costs are apportioned is equitable in relation to the benefits received.

Many of the agreements we reviewed had only cursory or no detailed budget estimates. For example, 38 of the 73 agreements we reviewed were joint project agreements that failed to indicate the contributions of each party. These agreements support the operations of US&FCS Export Assistance Centers collocated with their trade promotion partners. A joint project agreement may be appropriate under these circumstances because US&FCS is supposed to work closely with its partners toward the common goal of promoting U.S. trade. However, when a particular agreement lacks a budget estimate showing each party's contribution, there is no documentation that the agreement meets the Joint Project Authority requirement of equitable apportionment of costs.

In its written response to our draft report, ITA concurred with our recommendation and stated that it is in the process of issuing new guidelines to ensure sufficient budget review of Economy Act and Joint Project authority agreements.

C. Economy Act Requirements for a Determination and Finding Should Be Followed

Of the ITA agreements we reviewed, we found none that were used to circumvent procurement or financial assistance guidelines. Yet, obligation agreements citing the Economy Act as their legal authority did not conform with requirements of the *Federal Acquisition Regulation* (FAR). The FAR requires agencies that obtain goods or services from another Department through Economy Act agreements to prepare a determination and finding (D&F), which documents that "(1) use of an interagency acquisition is in the best interest of the Government; and (2) the supplies or services cannot be obtained as conveniently or economically by contracting directly with a private source."[3] Additional matters must be addressed in the D&F if the Economy Act order requires contracting by the servicing agency.[4] According to the FAR, a D&F "shall be approved by a contracting officer of the requesting agency with authority to contract for the supplies or services to be ordered, or by another official designated by the agency head."[5]

ITA officials admitted that this is not being done. We believe that ITA should prepare D&Fs for its Economy Act agreements with other agencies. Because ITA's procurement contracts are prepared by the National Oceanic and Atmospheric Administration's Acquisitions Management Division, this group should review the D&Fs, except for those agreements which would be reviewed by the Department's Office of Acquisition Management, as noted below.

In our June 1998 draft report to the Department,[6] we recommend establishing a process whereby all bureau Economy Act agreements above a certain dollar threshold are reviewed and approved by the Department's Office of Acquisition Management (OAM). We recommend that the approval of OAM contracting officers who have training and experience in obtaining goods and services, particularly through competitive bidding, and are independent of the bureaus' contracting staff, will help ensure that the federal government obtains goods and services from the most cost-effective source. ITA officials should work with OAM to develop a process for appropriate review of D&Fs for all of its Economy Act agreements, with NOAA's procurement staff reviewing all D&Fs at or below the dollar threshold set by the Department, and OAM reviewing all D&Fs that exceed the threshold.

The Economy Act also applies to orders between major organizational units within an agency, but

[3] FAR § 17.503(b).

[4] FAR § 17.503(b).

[5] FAR § 17.503(c).

[6] Draft Inspection Report: *Office of the Secretary—Interagency and Other Special Agreements Require Better Management and Oversight*, IPE-10418, June 22, 1998.

the FAR specifies that agency regulations will govern these intra-agency transfers.[7] Commerce does not have any internal guidance implementing this section of the FAR. Therefore, there is no standard for documenting that transfers within Commerce are the most economical solution and are not in competition with the private sector. We have recommended that the Department develop a standard method of documenting this determination for all intra-agency Economy Act transfers. In the meantime, we believe that ITA as the ordering agency should prepare a written justification that supports its determination that its purchases from other Commerce entities comply with the Economy Act.

In its written response to our draft report, ITA stated that it will evaluate what is necessary to prepare a D&F for Economy Act agreements. ITA states that most of their Economy Act agreements fall below the $250,000 threshold recommended by the National Performance Review for Economy Act D&F statements. ITA further states that it "will meet the regulatory requirements of the FAR for Economy Act D&F statements" when it receives expected direction on the review and approval process by the Department's Office of Acquisition Management.

OIG Comments. We disagree with ITA's response. The "recommendation" by the NPR for Economy Act D&Fs is currently only that — a recommendation. The FAR, as currently written, is the controlling instrument and it continues to state that "Each Economy Act agreement shall be supported by a Determination and Finding (D&F)."[8] OGC agrees with our position that ITA must comply with existing guidelines for Economy Act D&Fs as contained in the FAR, and for intra-agency agreements, those guidelines contained in the Accounting Principles Handbook (at Chapter 18.12, Section 6.01, Reimbursable Agreements).

D. Legal Review Process Could Be Strengthened

We found that there is no formal process for the legal review of agreements. Legal review is necessary to protect the interests of the Department, ensure that the agreement and its supporting documentation are complete, ascertain that the legal authority supporting the agreement is appropriate, and that the agreement is justified. OGC attorneys who are in the position to review and approve the draft agreement documents stated that they believe they see most, if not all, of ITA's agreements. However, because many agreements lacked basic requirements, such as a citation to legal authority, it was apparent from the documents alone that they were not all reviewed by OGC.

[7] FAR § 17.500(a).

[8] FAR § 17.503(a)

ITA needs to develop written guidelines for legal review of agreements that its headquarters and field units must follow when developing or managing an agreement. In our June 1998 draft report to the Department, we recommend that OGC develop guidelines for its legal review of agreements, including what minimal information and documentation are necessary. Other guidelines may include streamlining the process of legal review of agreements, and setting certain criteria for OGC review of ITA agreements. ITA works with two OGC legal entities on the review of proposed agreements. The Chief Counsel for International Commerce conducts a legal review with ITA policy officials to ensure that the proposed agreements are within ITA's mission and its appropriations and statutory authority. The Assistant General Counsel for Administration (General Law Division) then conducts a complementary review of the agreements to ascertain compliance with administrative law. Together, these two offices of OGC can provide a thorough legal review for most ITA agreements. We suggest, however, that there may be some agreements which may need review by only one of these entities. For example, those agreements that reach a certain dollar threshold, include irregular terms and conditions, or involve a private or foreign party may require legal review by both offices, while others could be reviewed by the Chief Counsel for International Commerce. We recommend that ITA officials continue to work closely with OGC to develop appropriate legal review guidelines for both the Assistant General Counsel for Administration and the Chief Counsel for International Commerce.

In its written comments to our draft report, the chief of OGC's General Law Division states that the Chief Counsel for International Commerce, who is considered part of OGC, has no responsibility for review and approval of Economy Act and Joint Project Authority agreements.

OIG Comments. However, we continue to believe the Chief Counsel for International Commerce should continue to have an important role, complementary to that of the General Law Division, in the review of ITA agreements. We reiterate that it is important that both entities continue to work with ITA during the review of agreements and as ITA develops its guidelines and procedures for handling its agreements.

E. A System to Recover the Full Cost of Agreements Must be Developed and Enforced

One of the areas of weakness found during our Department-wide review of agreements is that Commerce agencies frequently do not recover their full costs of performing work covered by an Economy Act agreement. Because of time constraints, we did not conduct an independent analysis to determine whether ITA is recovering its full costs. However, we did interview cognizant ITA officials about this topic.

These officials do not believe that ITA agreements recover full costs, nor do they believe that they should. The explanation given for this view is that the salaries of ITA staff performing the work under agreements are already covered by ITA's base appropriations. ITA officials stated that the

bureau does not have a cost recovery policy, and they believe that it is only appropriate to recover the marginal cost incurred (*e.g.*, travel or other non-personnel costs) in performing reimbursable work. Furthermore, it was stated that ITA does not have a cost allocation system with which it can easily capture such information.

We do not believe that ITA's policy or practice on cost recovery is appropriate. The Economy Act requires agencies to recover the actual cost of goods or services provided. The term "actual cost" includes all direct costs attributable to providing the goods or services ordered, as well as indirect costs funded out of the performing agency's currently available appropriations that bear a significant relationship to providing the goods or services. For ITA to enter into an agreement and undercharge a sponsoring agency would have the effect of augmenting that agency's appropriation. Were ITA to undercharge, it would improperly deplete its appropriations to the benefit of the other party and compete unfairly with the private sector. ITA, therefore, needs to develop a clear policy on, and establish a mechanism for, allocating and fully recovering its costs in conjunction with performing work under agreements.

In its written response to our draft report, ITA states that although it agrees that ITA should examine its cost recovery policies and practices, it disagrees with the conclusions we reached from our interviews with ITA officials, individuals who ITA states may or may not be familiar with cost recovery issues. Furthermore, ITA states that, based on its examination of actual Economy Act agreements, it found that:

"(1) ITA's use of reimbursable agreements limits the possibility of ITA augmenting its appropriation because agencies using reimbursable agreements operate under a full cost recovery system utilizing project codes; and

(2) The reimbursable agreement serves as a safeguard against diverting resources appropriated for ITA since it deals with actual cost rather than estimated cost."

OIG Comments. We still disagree with ITA's response. The "full cost recovery" cited above in (1), only captures ITA's direct cost of the reimbursable work performed. It does not include the indirect costs funded out of ITA's appropriation that are incurred to provide the goods or services. We believe that ITA should thoroughly examine the issue of cost recovery during its internal review of agreements and confer with appropriate departmental officials to reach a uniform policy and guideline for handling this issue. We request the opportunity to review the final policy and guidance.

F. Termination Dates or Review Periods are Not Always Defined

Some ITA agreements we reviewed did not define a termination date or review period. When the stated performance period is undefined or indefinite, it is difficult to determine whether the agreement is still valid and whether reassessment of the agreement ever occurred. In addition, even if a need still exists, as time passes, critical features of the project, such as the level of funding or other resources, may need modification. An ill-defined performance period may ultimately result in the performance of work that is no longer mission-related, the waste of funds and personnel, or the inequitable apportionment of project costs.

For example, the US&FCS district office in Nashville, Tennessee, established a branch office in Knoxville, effective March 1990, before the present network of USEACs was established. With the new USEAC structure, Knoxville is now a "spoke" office reporting to the Atlanta USEAC "hub" site, not Nashville. Also, we found many agreements that had expired, some as recently as June 1998, and others as early as March 1995, without a new agreement put in place, even though the interagency relationship continued to exist.

Defining these relevant dates or time periods is important to ensure that agreements are properly administered and kept up-to-date. All agreements should have a defined performance period with a stated effective date, and when possible, a specific termination date. For agreements that continue over an extended term where it is not feasible to define a termination date, the agreement should have a provision for a periodic review and amendment by mutual consent of the parties. We recommend that agreements are reviewed, revised, and renewed as appropriate, but at least every three years.

In its written response to our draft report, ITA concurred with our recommendation.

G. Implementation of Guidelines Should be Transmitted Agency-wide

Once completed, ITA should distribute this guidance and other information relevant to preparing and processing agreements through its intranet and present the information at ITA conferences. Any subsequent changes in federal, departmental, or agency regulations or procedures and applicable laws should also be widely distributed. Finally, ITA should provide training on how to properly prepare and process agreements to program and administrative staff responsible for agreements. Such training should also cover appropriate cost allocation and cost recovery methods.

In its written response to our draft report, ITA concurred with our recommendation.

II. USEACs Should Use Agreements More Consistently

For agreements entered into by US&FCS's U.S. Export Assistance Centers (USEACs)[9], located in nearly 100 cities throughout the United States, the process for creating interagency agreements has sometimes worked well, particularly for the "hub" sites where US&FCS is usually collocated with other federal agencies. For example, the core agreement to establish the USEAC network nationwide was developed through the participation of the USEAC partner agencies: US&FCS, SBA, Ex-Im Bank, and USAID. This 1995 agreement was carefully crafted in interagency meetings and with legal and procedural clearances by all parties before it was put into effect. Individual USEACs then execute agreements with their collocated non-federal trade promotion partners (such as state and local economic development groups, and world trade associations), to document what office services or expenses (such as rent, facsimile, photocopiers, telephone, or reception services) each organization will pay for. Agreements therefore serve important programmatic and administrative functions.

With the help of OGC, US&FCS's Office of Domestic Operations drafted "boilerplate" language, which is used by all USEACs for the basic operating agreements with their local partners. The draft language for the agreements specifies the programmatic and administrative responsibilities as well as how much money each contributes to the agreement. While the draft language appeared to cover the essentials for a joint project, the content of the actual agreements frequently lacked specific information or supporting documentation. The draft agreements, because they are brief in length and generally follow the "boilerplate" model constructed by US&FCS and OGC, are forwarded from the USEACs to the Office of Domestic Operations, and then to OGC for clearance, without the need for the Chief Counsel for International Commerce to review them.

Some USEAC sites, however, are operating under informal arrangements that are not documented in written agreements and are not always forwarded to OGC for review and clearance. In telephone interviews with US&FCS officials in the USEACs and US&FCS Regional Offices, a different picture emerged concerning their handling of agreements:

- There are inconsistencies in how individual USEACs process their agreements. Although some officials said that they send all of their agreements through US&FCS headquarters and OGC for review and clearance, other field officials were not certain that this was actually happening.

[9] USEACs were created as part of the National Export Strategy, developed by the Trade Promotion Coordinating Committee. The USEACs, with a national network of "hub" sites staffed by representatives from US&FCS, SBA and Ex-Im Bank, linked to "spoke" sites of a few US&FCS staff, offer "one-stop" shopping for small-to-medium U.S. exporters seeking export counseling, information, financial assistance, and other trade promotion services.

- One of the Eastern Region USEAC directors said that he seldom entered into formal written agreements with his local trade partners because he finds this to be too constraining and time consuming given the time it would take to produce a written agreement and have it approved by the leadership of each participant. Instead, he stated that he relies on "informal agreements."

- The director for the US&FCS Eastern Region stated that he has not seen or initiated any agreements, but admitted that he needs to establish more relationships with his region's trade partners and, thus, may use more agreements in the future, to undertake public-private export initiatives.

Participation by local organizations, particularly state and local governments and nonprofit trade associations, is an essential part of the USEAC concept. Particularly because a boilerplate agreement has been created to simplify the process, USEACs should regularly pursue written agreements with their local trade promotion partners. Negotiating and formalizing existing or future relationships help define each partner's responsibilities and expectations. USEACs can then have a firmer basis on which to rely for the assistance and support of its partners.

In its written response to our draft report, ITA agreed with our observations and conclusions on the USEACs' use of agreements for collocation arrangements with their local trade partners, and the need for better documentation and legal review of these and other agreements as well as better controls and oversight regarding review and approval of these agreements. ITA plans to address these concerns by not allowing the transfer of funds or the initiation of activities between parties until the CFO approves the agreement by signature. ITA field units will not be allowed to execute any terms in agreements without CFO approval.

III. ITA Should Develop a Centralized Database of Agreements

We found that ITA does not have a centralized database of its agreements. As a result, ITA managers or officials cannot be confident that they are aware of all the agreements the agency may have in effect. ITA officials acknowledged that having a central database of agreements would be beneficial, especially since there is frequent turnover of ITA senior program officials.

From an administrative perspective, a central database of agreements should help ITA in administering and maintaining its agreements. The FAR requires that the Department and its bureaus maintain centralized files for contracts and grants in order to provide better control and oversight. We believe that there is nothing unique about agreements that would preclude them from being similarly reviewed and maintained. By having relevant dates in the system, program managers could easily identify which agreements are due for renewal, termination, or review. Also, officials could quickly respond to inquiries on particular agreements by accessing the system by identifying number, project title, or contact name.

We believe that the creation of such a database of agreements for ITA would not only allow it to track and manage its agreements, but it could also be a useful management tool for other purposes. For example, the Government Performance and Results Act of 1993 requires federal agencies to describe coordination and planning with other agencies on shared or similar functions and programs. In July 1997, the House Science Committee criticized Commerce's strategic plan for failing to adequately discuss coordination of cross-cutting programs. The Department has since included more information about program "linkages" in its strategic plan for 1997-2002. For each strategic theme (economic infrastructure, science/technology/information, and resource and asset management and stewardship), the Department describes several linkages with other federal and non-federal parties that support these strategic themes. Basic information from a departmental database of agreements, including those of ITA, could be used to further develop these linkages.

During our review, ITA officials agreed that a database of summary information for each agreement should be established and maintained, allowing ITA to quickly determine what agreements exist and obtain agreement information. We believe that at least the following summary information on each agreement should be stored in an electronic database: purpose or title, participating parties, termination date, review period, funding information, legal authority, and contact person or office. The database should also identify the type of agreement, such as memoranda of understanding or agreement, reimbursable agreement, or obligation agreement. This system could also be used to establish a document numbering system. Each entry would be assigned a unique number, which would then be placed on the actual agreement and any related documents, allowing ITA to better identify and track the physical documents.

In our June 1998 draft report to the Office of the Secretary, we recommend that the Department develop Department-wide guidelines for developing, reviewing, and tracking agreements. We have identified two options for creating the Department's central list of agreements. First, the Department could develop one standard system or database program that each bureau can access to add, modify, or delete agreements. Alternatively, each bureau could maintain its own database that is compatible with requirements specified by the Department. The Department would define which data elements are required for a centralized list and then require the bureaus to periodically provide the information electronically to be uploaded into the central list at the Department level. We have requested that the Department inform us of its final decision on how it will implement this recommendation.

We do not suggest that ITA delay its actions on creating a database until the Department responds to our recommendation. Instead, we urge ITA officials to begin discussions immediately with the Chief Financial Officer and Assistant Secretary for Administration to take the necessary steps to develop the ITA database.

In its written response to our draft report, ITA concurred with our recommendation for a centralized database of agreements.

RECOMMENDATIONS

We recommend that the Under Secretary for International Trade take the necessary actions to:

1. Prepare internal ITA policies and procedures for ITA's operating units that outline the steps for preparing and implementing agreements. In particular, the ITA guidance should:

    a. Require all ITA agreements to include at least the following items: citation of relevant legal authorities, applicable written justifications, signatures by the appropriate officials, total project costs, budget summaries, and termination dates and/or review periods. There should also be formal procedures that ensure agreements prepared by external parties contain all necessary information (see page 4).

    b. Direct the Office of Financial Management to review all ITA agreements to ensure funding availability and compliance with the federal, departmental, and ITA guidelines (see page 6).

    c. Direct ITA's Office of Administration to work with the Department's OAM to develop a process for appropriate review of D&Fs for all of its Economy Act agreements with other agencies, with NOAA's procurement staff reviewing all D&Fs falling below a dollar threshold set by the Department, and OAM reviewing all D&Fs that are at or above that threshold. Although a D&F is not required for Economy Act agreements within Commerce, ITA managers should be required to prepare a written justification that shows that the goods and services they are acquiring cannot be obtained as conveniently or cheaply from the private sector (see page 7).

    d. Include criteria for legal review of ITA agreements and ensure that all required legal reviews are completed before an agreement can be signed and implemented. This criteria should be established in conjunction with the Office of General Counsel (see page 8).

    e. Include a process for allocating costs on all agreements and attaining full cost recovery for Economy Act agreements (see page 9).

    f. Ensure that ITA agreements are reviewed, and revised or renewed, as appropriate, at least every three years (see page 11).

2. Distribute relevant guidance and information for preparing and processing agreements through ITA's intranet, and at appropriate ITA conferences. Any subsequent changes in federal, departmental, or agency regulations or procedures and applicable laws should also be widely distributed (see page 11).

3. Provide training to appropriate ITA staff on how to properly prepare, process, and administer agreements to all ITA program and administrative staff responsible for agreements. Such training should include the system and process for allocating costs and achieving full cost recovery, whenever appropriate (see page 11).

4. Establish a centralized system to adequately inventory, track, and control ITA's agreements (see page 13).

Appendix A: ITA Response to Draft Report

UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

SEP 30 1998

MEMORANDUM FOR Johnnie E. Frazier
Acting Inspector General

FROM: Alan Neuschatz
Chief Financial Officer and
Director of Administration

SUBJECT: Improvements Are Needed in ITA's Management of Interagency and Other Special Agreements
Draft Report No. IPE - 10752

Thank you for the opportunity to review the draft inspection report on, "Improvements Are Needed in ITA's Management of Interagency and Other Special Agreements." We appreciate your timely analysis of this issue. We expect that our own review on ITA Agreements, currently in draft, will enable us to address most findings and recommendations raised in your inspection draft.

We plan to implement recommendations from both the IG inspection report and from the internal review on ITA Agreements. Implementation of these reviews' findings and recommendations will make a major step forward in addressing management concerns by ensuring effective guidance and procedures are put in place for all types of ITA Agreements.

Our comments are attached to this memorandum. If you or your staff have any additional questions on our comments, please contact Ed Meyer at x5436.

Attachment

cc: T. Hauser

ITA Comments on Draft Inspection Report

ITA's comments on the Draft Inspection Report, "Improvements Are Needed in ITA's Management of Interagency and Other Special Agreements", are listed below. We concur with most findings and recommendations made by the IG staff. We plan to forward a copy of our final draft report on ITA Agreements[1] to both the OIG and the Office of General Counsel (OGC) within the next two weeks for comment and review. Our report indicates the actions we propose to address this important management process.

I. ITA needs to develop and implement guidelines to address deficiencies in agreements.

ITA generally concurs with most of the IG's observations and conclusions in Section I of the IG Inspection Report. We recognize that our existing guidance is minimal, out-of-date and requires revision. ITA's own MOU study has yielded similar findings.

ITA is currently creating several items to address these deficiencies. We have drafted a simple two page "How to" guidance that includes sample formats for all types of ITA agreements, explains applicable authorities, delineates signature level, and outline all necessary MOU components.

We also intend to revise ITA's Administrative Instruction 3-1, " Reimbursable Agreements," to include all types of ITA Agreements and issue new guidelines for review and clearance of all types of ITA agreements during the first quarter of FY 1999.

Once these procedures and guidelines are completed, ITA plans to distribute this guidance agency-wide and post it on-line.

These steps, in conjunction with a formalized clearance process, will ensure appropriate citation of legal authority, sufficient budget review of Economy Act and Joint Project Authority Agreements, establishment of review periods, establishment of review/termination dates and adequate legal review of all agreements.

ITA will also evaluate what is necessary to prepare a determination and finding (D&F) for Economy Act agreements. This may not be necessary because *most* ITA Economy

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[1]The term, "agreements" will be applied hereinafter as a general definition to include reimbursable agreements, agreements authorized under joint project authority (JPAs) and Memorandums of Understanding/Agreement (MOU/A) unless specifically referenced by type.

Act agreements fall well below the $250,000 threshold recommended by the National Performance Review (NPR) for Economy Act D&F statements. ITA will meet the regulatory requirements of the FAR for Economy Act D&F statements when we receive direction on the review and approval process to be developed by the Department's Office of Acquisition Management (OAM).

Although we agree that ITA should look at its cost recovery policies and practices, we do not agree with the IG's conclusions in I (E) based on opinions from interviewees. The conclusions were reached from interviews with ITA officials who may or may not be familiar with cost recovery issues.

ITA's internal study included analysis of cost recovery. The IG's conclusion regarding inadequate cost recovery is not supported when one examines actual Economy Act agreements. ITA's internal MOU review examined Economy Act agreements (which were mostly reimbursable agreements) and found that:

1) Using reimbursable agreements limits the possibility of ITA augmenting its appropriation because agencies using reimbursable agreement operate under a full cost recovery system utilizing project codes; and

2) The reimbursable agreement serves as a safeguard against diverting resources appropriated for ITA since it deals with actual cost rather than estimated cost.

II. USEACs should use agreements more consistently.

ITA concurs with the IG's observations and conclusions in Section II of the IG Inspection Report, although we believe some distinction is warranted between USEAC collocation agreements and other types of agreements.

Regarding USEAC collocation agreements, the "boilerplate" language developed with the assistance of OGC was intended for use with a specific subset of USEAC agreements, those pertaining to collocation arrangements. What ITA's MOU study found was that most of the collocation agreements in the sample spelled out the basic duties and responsibilities of the partners involved, but the level of duty and function description *varied substantially* from basic one-line sentences to comprehensive and in-depth paragraph clauses in these agreement. The boilerplate MOU's for collocation were not uniform. Our team identified a lack of controls and oversight regarding review and approval of these agreement by both ITA and OGC. This was applicable to all USEAC agreements.

Other USEAC agreements exist although fewer turned up in ITA's sample than expected. Many more agreements are put in place by field units without any oversight

from ITA headquarters. ITA plans to address this problem by requiring CFO signature on all agreement before any funds can be transferred between parties or before any activities can be initiated. Field units entering agreements without CFO approval will not be able to execute any terms in the agreements.

III. ITA should develop a centralized database of agreements.

ITA concurs with the IG's observations and conclusions in Section III of the IG Inspection Report. As ITA implements the recommendations from its own internal MOU study and this IG inspection report, we will inform the IG how a centralized database of agreements will be established and maintained.

Conclusion

The draft report offers some helpful findings and recommendations to identify and improve the review and approval of agreements in ITA. Upon receipt of the final report, ITA will provide an action plan to address the recommendations we agree with in this draft report. We hope our comments clarify and provide a better understanding of our position on certain recommendations. As stated in our opening paragraph, ITA plans to forward a copy of our draft MOU report to the IG when it is completed

Appendix B: Office of General Counsel Comments on Draft Report

SEP 30 1998

UNITED STATES DEPARTMENT OF COMMERCE
Office of the General Counsel
Washington, D.C. 20230

MEMORANDUM FOR: Jill A. Gross
Acting Assistant Inspector General
for Inspections and Program Evaluations
Office of the Inspector General

FROM: Brian D. DiGiacomo
Chief, General Law Division

SUBJECT: Draft Inspection Report No. IPE-10752

As you requested at our meeting this morning, below we are providing our comments to Draft Inspection Report No. IPE-10752[1] on interagency and other special agreements of the International Trade Administration (ITA). We generally agree with the recommendations of the ITA report and have already begun to work with ITA on some of the issues identified.

Again, we are pleased to note the report reveals no problems with the accuracy or completeness of our legal review. We also note the review did not reveal any case where the problems identified in the report resulted in harm to ITA or to the Department. This fact is significant as the Department attempts to balance the need for new requirements with the continued need for flexibility in carrying out the wide variety of activities and functions among all Department bureaus and offices. We hope our comments will assist you in making your final reports both accurate and effective, and we are glad to assist in improving policies and procedures concerning the review and management of agreements. We appreciate your office's efforts in attempting to attain that goal.

Again, we would like to stress that the ultimate responsibility for compliance with all requirements will rest with the official who signs an agreement. Therefore, we believe the primary goal of any plan for improvement should be to ensure that managers fully understand both the requirements in the law and their responsibility. We will continue to work with your staff in this effort.

As with Draft Inspection Report No. IPE-10418[2], the ITA report coincides with our own recent efforts with ITA and other operating units to improve the preparation and review of agreements. We would like for the IG reports to reflect our involvement in this process

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[1] Draft Report: *Improvements Are Needed in ITA's Management of Interagency and Other Special Agreements* (IPE-10752).

[2] Draft Report: *Office of the Secretary, Interagency and Other Special Agreements Require Better Management and Oversight* (IPE-10418).

and ITA's efforts, which have all been undertaken independent of the IG review process.

The following is our response to the specific recommendations you have made in your draft report--these responses are intended to supplement our comments which we set forth in our response to Draft Inspection Report No. IPE-10418:

- We agree with the formal recommendations set forth at the conclusion of your report. However, we are not aware of any authority which exempts agencies from making the determinations required by the Economy Act for intra-agency agreements, which you mention in the fourth bullet item under recommendation 1. We understand that the determinations and findings required by the Federal Acquisition Regulations may not be required in such circumstances, but the statutory requirements (including making certain determinations) continue to apply to all agreements.

- We believe the draft report warrants a closer review for internal consistency. For example, in Section I (A), the report states that the Economy Act is "one of the most frequently cited authorities for ITA agreements" and that the Joint Project Authority "is another." However, the report later indicates that at least 38 of the 73 agreements you reviewed were joint projects. Therefore, most of the agreements reviewed were joint projects and the generalization that the Economy Act is one of the most frequently cited authorities is inaccurate. It is true that the Economy Act is a frequently cited authority, but the most frequently cited authority for agreements which your office reviewed was the Joint Project Authority. If your sample was too small to determine which is definitively the "most frequently cited," we would recommend not using such superlatives.

  Another section of the report where closer review would produce a more accurate report is section I(D). Although it is not a formal recommendation, the report recommends that "ITA officials work closely with OGC to develop appropriate legal review guidelines for both OGC and ITA's Chief Counsel." This conclusion fails to recognize that the Chief Counsel for International Commerce is part of OGC. Further, as indicated above, we object to any implication that the Chief Counsel for International Commerce is responsible for review and approval of Joint Project Agreements and Economy Act Agreements.